SUPREME COURT OF THE UNITED STATES.

No. 425.

ALEXANDER ROBERTSON, JOHN FREER BLACKLOCK, WILLIAM McBURNEY, AND WILLIAM J. BALL, APPELLANTS,

vs.

CAROLINE CARSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

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a United States circuit court, South Carolina district.

I, Daniel Horlbeck, clerk of the circuit court of the United States for South Carolina, do hereby certify that the accompanying one hundred and twenty-three pages of writing are a full and true copy of the record and proceedings in said circuit court, in the cause of Caroline Carson, (complainant,) appellee, and Alexander Robertson et al., (respondents,) appellants, now on appeal from the circuit court to the Supreme Court of the United States.

In witness whereof I have hereunto set my hand and affixed the seal of the said circuit court, at Charleston, this twenty-eighth day of June, anno Domini eighteen hundred and seventy-two.

[SEAL.] DAN. HORLBECK,
C. C. C. U. S. for S. C.

1 UNITED STATES OF AMERICA,
District of South Carolina:

Circuit court, fourth circuit.

Transcript of record and proceedings of the circuit court of the U. S. for South Carolina, 4th circuit, in equity, on an appeal from the decree of said court for complainant.

ALEXANDER ROBERTSON, JOHN FREER BLACKlock, William McBarney, Elias N. Ball, William J. Ball, William Carson, James P. Carson, *ads.* CAROLINE CARSON.

McCrady & Son, sol'rs for W'm McBurney; Simons & Simons, sol'rs for W'm J. Ball; B. H. Rutledge, esq., sol'r for Jno. F. Blacklock; H. E. Young, esq., sol'r for Alex. Robertson.

No. 1.—Bill of complaint.

UNITED STATES OF AMERICA,
District of South Carolina, Fifth Circuit:

To the judges of the circuit court of the United States for the district of South Carolina, sitting in equity:

2 Caroline Carson, of the city of New York, and a citizen of the State of New York, brings this her bill against Alexander Robertson, John Freer Blacklock, William McBurney, Elias Nonus Ball, all of the city of Charleston, and citizens of the State of South Carolina; and William Ball, of St. John's Parish, and a citizen of the State of South Carolina; and William Carson and James Petigru Carson, both of the city of New York, and citizens of the State of New York.

And thereupon your oratrix complains and says that William A. Carson, of the parish of St. John's Berkley, of Charleston district, in the State of South Carolina, being seized of, possessed of, and entitled to a very considerable real and personal estate, did, on or about the eleventh day of March, in the year of our Lord one thousand eight hundred and fifty-four, duly make and publish his last will and testament, in writing, and did thereby specifically bequeath to your oratrix and her

sons, William Carson and James P. Carson, various articles of personal property, and did thereby also devise and bequeath, among other things, in the words and to the purport, as follows:

"I order and direct my executors, or such one as may qualify
3 hereon, to sell all the rest of my estate, real and personal, as soon after my decease and upon such terms as they or he may deem most judicious. Until such sale takes place, I order and direct my executors to apply so much of the income of my estate to the maintenance and support of my wife and children and the education of the latter as they or he, in their discretion, may deem fit and proper. From the balance of the income, until the sale, and from the proceeds of sale, I order and direct my debts to be paid, and then the residue of the purchase-money to be divided into three equal parts, and held by my executors or my qualified executor, in trust for the following purposes, viz:

"First. To pay the interest arising from one-third part thereof to my wife, Caroline Carson, for and during the term of her natural life, and the legacy and provision herein made for her shall be in lieu and bar of dower and every other claim she may set up upon my estate.

"Second. To pay and apply the interest arising from another third part thereof to the maintenance, education, and support of my son William Carson, during his minority, if they deem so much necessary; and upon his attaining the age of twenty-one years, the capital or principal thereof and its accumulation, if any, to be paid over to him absolutely.

4 "And third. To pay and apply the interest arising from the remaining third part thereof to the maintenance, education, and support of my son James P. Carson, during his minority, if they deem so much necessary; and upon his attaining the age of twenty-one years, the capital or principal thereof, and its accumulations, if any, to be paid over to him absolutely.

"ITEM.—I give, devise, and bequeath all the rest and residue of my estate, including the aforesaid third part, after my wife's death, to my two sons William Carson and James P. Carson, or the survivor of them, should either die under the age of twenty-one years.

"ITEM.—I nominate, constitute, and appoint my friends Alexander Robertson and John Freer Blacklock, executors of this my last will and testament, and testamentary guardians of my children."

All of which devises, bequests, and appointments will more fully appear on reference to the copy of the said will and testament, which is herewith filed as Appendix A, and to which your honor's attention is craved.

And your oratrix further sheweth unto your honors that the said William A. Carson died on or about the seventeenth day of August, in
the year of our Lord one thousand eight hundred and fifty-six,
5 without revoking his aforesaid will or any part thereof; that the said will was duly proven in the court of ordinary for Charleston district of the State of South Carolina; that the said Alexander Robertson and John Freer Blacklock took upon themselves the burthen and execution thereof, and entered upon the real estate of the said testator, and did possess themselves of all the personal property of the said testator, which real and personal property was of great value; that the said Alexander Robertson and John Freer Blacklock have ever since received the rents and profits thereof, and having paid all the debts of the said testator, and all lawful charges upon this estate still have in their possession a large balance of the said testator's estate; which balance your oratrix supposes to be of great value, viz., of the value of eighty

thousand dollars, ($80,000,) good and lawful money. And your oratrix further sheweth that she is the Caroline Carson in the aforesaid will named by the testator; that she always has been and now is ready to accept in lieu of her dower, and of any and every claim she may be entitled to set up on the estate of her husband, the said William A. Carson, the legacies bequeathed to her as aforesaid; that her sons, the aforesaid William Carson and James P. Carson having both
6 attained the age of twenty-one years, and being both citizens of the State of New York, did assign to your oratrix all their right, title, and interest to and in any property of any kind to which they were entitled under the will of their father, the said William A. Carson, as will more clearly appear from the copies of the deeds of assignment filed therewith as Appendices B and C, to which your honor's attention is craved.

And your oratrix further sheweth that, both as legatee as aforesaid and assignee as aforesaid, she hath, at various times, by herself and her agents besought the said Alexander Robertson and John Freer Blacklock to come to a full and true account with her of the estate of the said William A. Carson, and to pay over to your oratrix the balance which your oratrix believes to be in their hands, viz., eighty thousand dollars, ($80,000,) or such balance as might have proven to be in their hands after a full and true account of the assetts of the said estate, and of the lawful expenditures by them made for the same.

And your oratrix had well hoped that the said Alexander Robertson and John Freer Blacklock would have complied with such your oratrixes reasonable request; but so it is, may it please your honors, that they always have refused and neglected, and do refuse and neg-
7 lect to account fully and truly with your oratrix or with the said William Carson, or with the said James P. Carson, and have always refused and neglected, and do refuse and neglect to pay to your oratrix or to the said William Carson, or to the said James P. Carson the said balance of eighty thousand dollars, ($80,000,) or any part thereof, or to convey or to transfer to your oratrix any part of the estate of the said William A. Carson, which may be in their possession. And the said Alexander Robertson and John Freer Blacklock, at times, pretend that they have no balance as aforesaid, because they conveyed and released the real estate of the said testator, or a large part thereof, or a lien which they had on the same as executors of the said testator, to one Elias Nonus Ball.

Whereas, your oratrix chargeth that they did not convey nor release, as they pretend, but that they are still seized of all the lands of the said William A. Carson, or have a lien thereon for the use and benefit of your oratrix, and that if they have conveyed and released, as they pretend, the said lands, then the said Alexander Robertson and John Freer Blacklock so released and conveyed without receiving a valuable consideration for so doing, and should make good to your oratrix the value
8 of the lands so conveyed and released.

And your oratrix further chargeth that the said Elias Nonus Ball, and one William McBurney, who pretends that he is seized of or entitled to the lands of the said William A. Carson, or a part thereof, aided and abetted the said Alexander Robertson and John Freer Blacklock, in committing the said breach of trust, and that if it be true that the said Alexander Robertson and John Freer Blacklock, conveyed the said lands or released their lien upon the same to the said Elias Nonus Ball, the said Elias Nonus Ball, knowing that the said Alexander Robertson and John Freer Blacklock were seized of the said lands or had a lien thereon for the benefit of your oratrix and her two infant sons, the said

William Carson and James P. Carson, did, without paying any valuable consideration therefor, persuade and procure the said Alexander Robertson and John Freer Blacklock, to convey the said lands or release their lien upon the same, to him, the said Elias Nonus Ball; and your oratrix chargeth that if the said Elias Nonus Ball, truly conveyed a good legal title in the said lands to the said William McBurney, as is pretended, he the said William McBurney, became seized of the same without a valuable consideration and with full knowledge that
9 the said Alexander Robertson and John Freer Blacklock, being trustees as aforesaid, conveyed the said lands or released their liens upon the same, if indeed they conveyed and released as is pretended, to the said Elias Nonus Ball, in breach of their trust and without receiving from the said Elias Nonus Ball a valuable consideration; and that he, the said William McBurney aided and procured the said Alexander Robertson and John Freer Blacklock, to commit their aforesaid breach of trust; and that both Elias Nonus Ball and William McBurney, derived great advantage from the said breach of trust; and your oratrix chargeth that the said Elias Nonus Ball should make good all losses that have occurred to your oratrix by the said breach of trust, and that the said William McBurney, if he be seized of the said lands as is pretended, should in equity be declared to hold them for the benefit of your oratrix and should not derive advantage from his own wrong. And sometimes the said Alexander Robertson and John Freer Blacklock, pretend they have no balance in their hands because they released to the said Elias Nonus Ball certain large debts due by the said Elias Nonus Ball and William McBurney, to them the said Alexander Robertson and John Freer Blacklock, as executors of the
10 said William A. Carson; whereas, your oratrix chargeth that, as she is informed, the said Alexander Robertson and John Freer Blacklock never have released the said debt as they pretend, and that if they have, they released them without receiving a valuable consideration for so doing, and should make good to your oratrix the debt so released, and that the said Elias Nonus Ball and William McBurney are liable to make good the same, having procured them to be released by the said Alexander Robertson and John Freer Blacklock, without paying therefor a valuable consideration, and with full knowledge that the said Alexander Robertson and John Freer Blacklock, held the said debt as trustees for the benefit of your oratrix and her said infant sons.

To the end, therefore, that the said defendants may, if they can, show why your oratrix should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as, by the note hereunder written, they are respectively required to answer, that is to say:

11 1. Whether the aforesaid William A. Carson, made his last will of the date and effect herein set forth, or made any later will, and if so, of what date and effect, and whether the said William A. Carson, died of the date hereinbefore set forth, and if not when he died, and whether the aforesaid last will of the said testator, was admitted to probate as aforesaid, and whether the said Alexander Robertson and John Freer Blacklock, entered upon the real estate of the said testator and took possession of his personal estate, and what was the value of the same, and whether they sold the said real and personal estate, and for what sums of money.

2. What were the debts and legacies of the said testator, and what were the charges upon his estate, and what sums of money the said Alexander Robertson and John Freer Blacklock paid in satisfaction of the said legacies, debts, and charges, and whether there was not left in the hands of the said Alexander Robertson and John Freer Blacklock, after the said payments had been made, a balance of eighty thousand dollars ($80,000,) of lawful money, or of that value; and if not, what balance was left in the hands of the said Alexander Robertson and John Freer Blacklock.

3. Whether your oratrix and the said William Carson and James P. Carson did not repeatedly request the said Alexander Robertson
12 and John Freer Blacklock to account to them for the legacies which they are entitled to under the aforesaid will, and to pay over the said legacies to them; and whether your oratrix has not repeatedly, since the aforesaid assignment, requested the said Alexander Robertson and John Freer Blacklock to account to her for the said legacies, and to pay over the same to her; and whether the said Alexander Robertson and John Freer Blacklock have not and still do neglect and refuse to pay the same to your oratrix and retain the aforesaid balance in their own possession.

4. Whether the said Alexander Robertson and John Freer Blacklock sold the lands once of the said William A. Carson, or any part thereof, to the said Elias Nonus Ball, and what sum the said Ball agreed to pay therefor, and whether he did ever pay the same, and whether the said Elias Nonus Ball did, and at what time he did, execute a mortgage of the said lands to the said Alexander Robertson and John Freer Blacklock, to secure the payment of the purchase-money agreed by him to be paid for the same; and whether the said Alexander Robertson and John Freer Blacklock released and satisfied, before this complaint made to your honors, the said mortgage, and whether the said Elias Nonus
13 Ball paid to them, the said Alexander Robertson and John Freer Blacklock, any valuable consideration for executing the said release and satisfaction, and wherein such valuable consideration consisted; and whether, also, the said Elias Nonus Ball knew that the said Alexander Robertson and John Freer Blacklock held the said mortgage as trustees for the benefit of your oratrix and her infant sons, when they pretended to release and satisfy the same.

5. Whether the said William McBurney purchased from the said Elias Nonus Ball, lands once of the said William A. Carson, or any part thereof; and whether the said Elias Nonus Ball delivered to the said William McBurney a paper purporting to be a conveyance of such lands, by the said Elias Nonus Ball, to him, the said William McBurney; and whether the said William McBurney is in possession of such lands; and whether the said McBurney paid any valuable consideration for the same, and wherein such consideration consisted; and whether the said William McBurney did not know, at the time he took the aforesaid pretended conveyance of the said lands, that they had been mortgaged by the said Elias Nonus Ball to the said Alexander Robertson and John Freer Blacklock, as trustees for the benefit of your oratrix and her infant sons; and that the said Alexander Robertson and John Freer Blacklock
14 had not released and satisfied the said mortgage to the said Elias Nonus Ball, or had pretended to do so, in breach of their trust, without receiving a valuable consideration therefor from the said Elias Nonus Ball; and whether the said William McBurney aided and abetted the said Elias Nonus Ball in procuring the said mortgage to be released in the manner hereinbefore stated.

6. Whether the said Alexander Robertson and John Freer Blacklock sold to the said Elias Nonus Ball any of the personal property once of the said William A. Carson, and what sum of money was agreed to be paid for the same by the said Elias Nonus Ball; and whether the said Elias Nonus Ball and the said William Ball bound themselves to pay the said sum of money; and whether the said Alexander Robertson and John F. Blacklock released the said Elias Nonus Ball and William Ball from paying the same, without receiving from the said Elias Nonus Ball any valuable consideration for so releasing them; and whether the said Elias Nonus Ball and William Ball knew, when they accepted the said release of their debt, that the said Robertson and Blacklock held the said debt as trustees for your oratrix and her infant sons.

And that the said defendants may answer the premises, and that
15 an account may be taken of the real and personal property, and of the debts and legacies of the said testator, and that the said Alexander Robertson and John Freer Blacklock may be decreed to pay to your oratrix the surplus of the estate of the said testator, after the payment of all his just debts and his legacies, and on their failure to do so, that the aforesaid mortgage, held by the said Alexander Robertson and John Freer Blacklock, may be foreclosed; or if it prove to have been released by the said Alexander Robertson and John Freer Blacklock, then that the said Elias Nonus Ball may be decreed to make good to your oratrix the purchase-money of the lands hereinbefore spoken of, and on his failure to do so that the said William McBurney may be decreed to hold the lands hereinbefore spoken of, as trustee for the benefit of your oratrix; and that the said William Ball may be decreed to make good to your oratrix the debt released to him as hereinbefore described; and that your oratrix may have such other and further relief in the premises as the nature of the case may require and as to your honors may seem meet:

May it please your honors to grant to your oratrix not only writs of injunction to restrain the said Alexander Robertson and John Freer Blacklock from transferring or selling any assets of the said Wil-
16 liam A. Carson which they hold, and from releasing any debts due them as executors of the said William A. Carson, and to restrain the said William McBurney from committing waste on the lands once of the said testator, of which he pretends to be seized, and from conveying the same to any person, but also writs of subpœna to be directed to the said Alexander Robertson, and John Freer Blacklock, Elias Nonus Ball, William Ball, William McBurney, William A. Carson, and James P. Carson, commanding them and every of them, at a certain day and under a certain pain therein to be specified, personally to be and appear before your honors in this honorable court, then and there to answer all and singular the premises aforesaid, and to stand, perform, and abide such order and decree therein as to your honors shall seem meet.

And your oratrix shall ever pray, &c.

JAMES LOWNDES,
JAMES CONNER,
Compl't's Sol'rs.

NOTE.—The defendants Alexander Robertson and John Freer Blacklock are required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6.

17 The defendant Elias Nonus Ball is required to answer the interrogatories numbered respectively 1, 3, 4, 5, 6.

The defendant William McBurney, is required to answer the interrogatories numbered respectively 1, 3, 4, 5.

The defendant William Ball is required to answer the interrogatories numbered respectively 1, 3, 6.

(Indorsed :) In equity circuit court of the United States, fifth circuit, district of South Carolina. Caroline Carson vs. Alexander Robertson, John Freer Blacklock, William McBurney, Elias N. Ball, William J. Ball, William Carson, James P. Carson. James Lowndes, complainant's sol'r. Filed 11th August, 1866.

No. 2.—EXHIBIT A.— *Will of W'm A. Carson.*

SOUTH CAROLINA:

In the name of God, amen: I, William A. Carson, of St. John's Berkley parish, Charleston district, State aforesaid, planter, being of sound and disposing mind and memory, do make and declare this to be my last will and testament, hereby cancelling and revoking all former wills and testaments by me heretofore made. It is my desire that I should be buried by the side of my mother, in St. Michael's
18 church-yard, Charleston.

IMPRIMIS.—I give and bequeath to my wife, Caroline Carson, the sum of two thousand dollars to be paid her by my executors as soon after my decease as convenient; also the entire furniture of her bedrooms, in the country and city; also my piano, carriage, and pair of horses.

ITEM.—I give and bequeath to my son William Carson, my gold watch, and negro boy Van Buren; to my son James P. Carson, my silver watch made by Tobias, and my gun and my negro boy Neptune; and to my sons William Carson and James P. Carson, jointly, all the rest of my guns, pistols and swords, my stock of wines and liquors of every kind, my books, mathematical instruments, telescopes, microscopes, barometers, &c., and all my plate and silver ware, spoons, forks, &c., and plated ware of every kind whatsoever; also my writing desk; also my dwelling-house and lot of land on Sullivan's Island, with all the furniture and chattels of every kind therein and on the said premises, together with all my boats of every description usually kept there by me for my use and convenience.

ITEM.—I give and bequeath to my friend John F. Blacklock, my slave Hector (carpenter.)

19 ITEM.—I give and bequeath to my sons, William Carson and James P. Carson, and the survivor of them, my slaves Matilda, Blanche, and her child Mela; and I enjoin it upon my said sons and the survivor of them that, in consideration of their fidelity and services to me, they be treated with special kindness and indulgence.

ITEM.—I order and direct my executors, or such one as may qualify hereon, to sell all the rest of my estate, real and personal, as soon after my decease and such terms as he or they may deem most judicious. Until such sale takes place, I order and direct my executors to apply so much of the income of my estate to the maintenance and support of my wife and children, and the education of the latter, as they or he, in their discretion, may deem fit and proper. From the balance of the income, until the sale, and from the proceeds of sale, I order and direct my debts to be paid, and then the residue of the purchase-money to be divided

into three equal parts, and held by my executors, or my qualified executor, in trust for the following purposes, viz:

1. To pay the interest arising from one-third part thereof to my wife, Caroline Carson, for and during the term of her natural life; and the legacy and provision herein made for her shall be in lieu and bar
20 of dower and every other claim she may set up on my estate.

2. To pay and apply the interest arising from another third part thereof to the maintenance, education, and support of my son William Carson, during his minority, if they deem so much necessary; and, upon his attaining the age of twenty-one years, the capital or principal thereof and its accumulation, if any, to be paid over to him absolutely. And,

3. To pay and apply the interest arising from the remaining third part thereof to the maintenance, education, and support of my son James P. Carson, during his minority, if they deem so much necessary; and, upon his attaining the age of twenty-one years, the capital or principal thereof and its accumulation, if any, to be paid over to him absolutely.

Should either of my said sons depart this life before attaining the age of twenty-one years, I give and bequeath the share of the one so dying to his surviving brother absolutely; but should both die before that period, I give and bequeath both their said shares to my next of kin by consanguinity.

ITEM.—I give, devise, and bequeath all the rest and residue of my estate, including the aforesaid third part, after my wife's death,
21 to my two sons, William Carson and James P. Carson, or the survivor of them, should either die under the age of twenty-one years; but, should both my said sons depart this life before attaining that age, I then give, devise, and bequeath both their said shares to my next of kin by consanguinity.

ITEM.—I authorize and empower my executors or qualified executor to invest and re-invest the purchase-money of my estate so as aforesaid, to be held in trust by them in such public or private securities or stocks as they may deem best.

Lastly. I nominate, constitute, and appoint my friends, Alexander Robertson and John F. Blacklock, executors of this my last will and testament, and testamentary guardian of my children.

Witness my hand and seal, eleventh day of March, in the year of our Lord one thousand eight hundred and fifty-four.

(Signed) W'M A. CARSON. [SEAL.]

Signed, sealed, published, and declared by the testator, as his last will and testament, in our presence, who, in his presence at his request and in the presence of each other, have hereunto subscribed our names in testimony thereof.

(Signed) H. A. DE SAUSSURE.
WILLIAM BLANDING.
LOUIS D. DE SAUSSURE.

Proved before George Buist, esq., O. C. D., August 18th, 1856.

November 5th, 1856, qualified Alexander Robertson and John F. Blacklock, executors therein named.

22 In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing pages to be and contain a true and correct copy of the original last will and testament of William A. Car-

son, late of Charleston district, planter, deceased, admitted to probate and record on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this twenty-sixth day of April, anno Domini eighteen hundred and sixty-six.

(Signed) GEORGE BUIST, [L. S.]
Judge of Probate.

No. 3.—EXHIBIT B.—*Assignment of William Carson.*

Know all men by these presents that I, William Carson, son of William A. Carson, late of the State of South Carolina, deceased, do hereby, in consideration of one dollar to me in hand paid by Caroline Carson, of the city of New York, convey, assign, transfer, and set over to the said Caroline Carson, her heirs, executors, administrators, and assigns, all my right, title, and interest in and to all the estate, both real and personal, which belonged to the said William A. Carson at the time of his death, and in and to all bonds and mortgages and other securi-
23 ties executed to or held by Alexander Robertson and John F. Blacklock, as executors of the last will and testament of William A. Carson, deceased, or as trustees under said last will and testament; and in and to all other property, both real and personal, in the hands of the said Robertson and Blacklock as such executors, or as such trustees; and in and to all property forming part of the said estate, or the proceeds thereof, held in trust by the said Robertson and Blacklock for me under said will or otherwise; and in and to all property and monies devised or bequeathed to me by the said William A. Carson, deceased, by his said last will and testament; and in and to all property and monies which, under the provisions of the said will, are directed to be held in trust by the executors and trustees thereunder for the benefit of the said Caroline Carson during her life-time; and in and to all monies and properties which, under the provisions of the said will, would become vested in me on the death of the said Caroline Carson.

In witness whereof I, the said William Carson, have hereunto set my hand and seal, this twenty-sixth day of February, in the year of our Lord one thousand eight hundred and sixty-six.

(Signed) WILLIAM CARSON. [SEAL.]

[U. S. revenue stamp, 50 c'ts.]

Sealed & delivered in presence of—
(Signed) S. V. F. RANDOLPH.

24 UNITED STATES OF AMERICA,
State of New York:

By this public instrument be it known to all whom the same doth or may in any wise concern that I, Henry E. Howland, a public notary in and for the State of New York, by letters-patent under the great seal of the said State duly commissioned and sworn, dwelling in the city of New York, do hereby certify that I have compared the annexed copy of the assignment of William A. Carson, son of William A. Carson, late of the State of South Carolina, to Caroline Carson of all his right title, and interest under the will of the late William A. Carson, with the original assignment now in my possession, which assignment is dated 26th day of February, 1866, and that the same is a true and correct copy of said original in all respects.

In testimony whereof I have subscribed my name and caused my no-

tarial seal of office to be hereunto affixed the 29th day of May, in the year of our Lord one thousand eight hundred and sixty-six.

(Signed) HENRY E. HOWLAND,
New York City.

STATE OF NEW YORK,
City and County of New York:

I, William C. Conner, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, (the same being a court of record,) do hereby certify that Henry E. Howland, whose name is inscribed to the certificate of the proof or acknowledgement of the annexed instrument and therein written, was, at the time of taking such proof or acknowledgement, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgement is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, the 20th day of May, 1866.

(Signed) WM C. CONNER, *Clerk.*

No. 4.—EXHIBIT C.—*Assignment of J. P. Carson.*

Know all men by these presents that I, James Petigru Carson, son of William A. Carson, late of the State of South Carolinia, deceased, do hereby, in consideration of one dollar to me in hand paid by Caroline Carson, of the city of New , convey, assign, transfer, and set over to the said Caroline Carson, her heirs, executors, administrators, and assigns, all my right, title, and interest in and to all the estate, both real and personal, which belonged to the said William A. Carson at the time of his death, and in and to all bonds and mortgages and other securities executed to or held by Alexander Robertson and John F. Blacklock, as executors of the last will and testament of William A. Carson, deceased, or as trustees under said last will and testament; and in and to all other property, both real and personal, in the hands of the said Robertson and Blacklock, as such executors or as such trustees; and in and to all property forming part of the said estate, or the proceeds thereof held in trust by the said Robertson and Blacklock for me, under will or otherwise; and in and to all property and moneys devised or bequeathed to me by the said William A. Carson, deceased, by his last will and testament; and in and to all property and moneys which, under the provisions of the said will, are directed to be held in trust by the executors and trustees thereunder for the benefit of the said Caroline Carson during her life-time; and in and to all moneys and properties which, under the provisions of the said will, would become vested in me on the death of the said Caroline Carson.

In witness whereof I, the said James Petigru Carson, have hereunto

set my hand and seal this fourth day of May, in the year of our Lord one thousand eight hundred and sixty-six.

(Signed) JAMES PETIGRU CARSON. [SEAL.]

[U. S. stamp, 50 c'ts.]

Sealed and delivered in the presence of—

(Signed) MOSES D. WHEELER, JR.
GEO. H. BAXTER.

UNITED STATES OF AMERICA,
State of New York:

By this public instrument be it known to all whom the same doth or may in anywise concern, that I, Henry E. Howland, a public notary in and for the State of New York, by letters-patent under the great seal of the State, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that I have compared the annexed copy of the assignment of James Petigru Carson, son of William A. Carson, late of the State of South Carolina, to Caroline Carson, of all his right, title, and interest under the will of the late William A. Carson, with the original assignment now in my possession, which assignment is
28 dated the 4th day of May, 1866, and that the same is a true and correct copy of said original in every respect.

In testimony whereof I have subscribed my name and caused my notarial seal of office to be hereunto affixed, the 29th day of May, in the year of our Lord one thousand eight hundred and sixty-six.

(Signed) HENRY E. HOWLAND,
Notary Public, New York City.

STATE OF NEW YORK,
City and County of New York:

I, William C. Conner, clerk of the city and county of New York, and also of the supreme court for the said city and county, the same being a court of record, do hereby certify that Henry E. Howland, whose name is inscribed to the certificate of the proof or acknowledgement of the annexed instrument, and therein written, was, at the time of taking such proof or acknowledgement, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same; and further, that I am well acquainted with the handwriting of such notary, and verily believe that the
29 signature to the said certificate of proof or acknowledgement is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 20th day of May, 1866.

(Signed) WILLIAM C. CONNOR, *Clerk.*

No. 5.—Endorsement on original bill.

(Endorsed on back of the bill by the clerk:)

"Withdrawn this 14 December, 1866, and a substituted bill filed in its place."

No. 6.—Subpœna ad respondendem.

Fifth circuit of the United States of America, district of South Carolina.

To Alexander Robertson, John Freer Blacklock, Elias Nonus Ball, William Ball, William McBurney, citizens of the State of South Carolina,

and William Carson and James P. Carson, citizens of the State of New York:

You are hereby strictly commanded and firmly enjoined, that all manner of excuses being laid aside, you personally be and appear before the clerk of the circuit court of the United States of America, for the aforesaid district, circuit, at the rules to be holden in Charleston, in the
30 aforesaid district, on the first Monday in September next, then and there true and perfect answer to make upon your corporal oath, on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of Caroline Carson, a citizen of the State of New York.

And also that you do, on the rule day next succeeding the day appointed and expressed for your appearance, file, or cause to be filed, in the clerk's office of said court, your plea, answer, or demurrer to the said bill of complaint.

Hereof fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness Salmon P. Chase, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, this eleventh day of August, in the year of our Lord one thousand eight hundred and sixty-six, and in the 91st year of the Sovereignty and Independence of the United States of America.

(Signed) JAMES LOWNDES,
(Signed) JAMES CONNER,
Compl'ts Solicitors.

MEMORANDUM.—The defendants are to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this subpœna is returnable; otherwise the bill will be taken pro confesso against them.

(Endorsed:)

31 U. S. MARSHAL'S OFFICE, SOUTH CAROLINA DISTRICT.

I hereby depute B. G. Pringle to execute the within process for William McBurney.

August 11th, 1866.

(Signed) J. P. M. EPPING,
U. S. Marshal.

I executed the within process by leaving a copy on William McBurney, esq., at 37 Hayne street.

Charleston, August 14, 1866.

B. GARDEN PRINGLE.

Service proved this 11th Aug., 1866.

(Signed) V. I. TOBIAS,
Notary Public.

N. E. I. As to Jno. F. Blacklock, Elias N. Ball, James P. Carson, William Carson, Alex. Robertson, Wm. Ball.

We acknowledge service of this writ for William J. Ball, defendant, Nov. 11, 1866.

(Signed) SIMONS & SIMONS.

I accept service for John F. Blacklock, def't, this 25th Oct., 1866.

(Signed) H. E. YOUNG.

Filed 21st Nov'r, 1866.

I accept service for Alexander Robertson, def't, this 19th Nov'r, 1866.
(Signed) B. H. RUTLEDGE, *Sol'r.*
Filed 21 Nov'r, 1866.

Circuit court of the U. S for South Carolina, fourth circuit.

MONDAY, 3 *Sep.*, 1866.—The court was opened at 11 o'clock
32 a. m., Hon. George S. Bryan, dist. judge, presiding.

No. 7.—Order for security for costs.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL. } Bill of complaint.

Ja's Lowndes, comp's sol'r.

It appearing on the face of the bill in this case that the complainant resides without this State and district, on motion of McCrady & Son, solicitors of Wm. McBurney, one of the defendants, it is ordered that the complainant do give security for costs in such amount as the commissioner acting as master shall deem sufficient, and that until such security for costs be given, all further proceedings in this case be staid against the said defendant William McBurney.

MONDAY, 12*th Nov.*, 1866.—The court was opened at 11 o'clock a. m., Hon. George S. Bryan, dist judge, presiding.

No. 8.—Report of clerk as to security for costs.

CARSON
vs.
ROBERTSON. } Bill for account and injunction.

To the judges of the circuit court:

The master of this court, to whom it has been referred to re-
33 port the amount in which security should be given by complainant, begs leave to submit: He considers that five hundred dollars is all that should be required at the present time, and that at a future time, if the costs should exceed the above sum in the progress of the cause, that the defendant be allowed, on motion, to have additional security.

(Signed) DAN'L HORLBECK,
Clerk of C. C., Acting as Master.

25TH OCT'R. 1866.

No. 9.—Exceptions to clerk's report as to security for costs.

CARSON
vs.
ROBERTSON ET AL. } In equity.

The complainant in the above case excepts to the report of the clerk recommending that the amount of security to be given by the complainant to the defendant McBurney, for his costs, be fixed at $500, on the following grounds:

I. That the clerk in estimating the costs should have included in his calculation only the expense of the next proceeding, and not the expenses of all possible steps that might be taken in a protracted suit.

II. That, on the principle apparently adopted by the clerk in making his estimate, the amount reported is too large, and is oppressive.

III. That the amount reported does not accord with that which should be required, if the analogy of the practice in Westminster Hall had been observed in calculating it.

(Signed) JAMES LOWNDES,
Complainant's Solicitor.

No. 10.—Order upon exceptions as to security for costs of W'm McBurney.

On hearing the report of the master in this case fixing the sum to be given for security for the costs of the defendant, William McBurney, and the exceptions thereto, it is ordered, on motion of James Lowndes comp'ts sol'r, that the complainant enter into security for the costs of the said defendant in the sum of $250, upon the terms of the former order, and that the said defendant have permission to apply for further security for costs in the progress of the cause.

No. 11.—Order for security for costs of W. J. Ball.

On motion of Messrs. Simons & Simons, sol'rs for W'm J. Ball, one of the def'd'ts, it is ordered that the complainant give security for costs in the sum of $250 (two hundred and fifty dollars,) for the defendant W'm J. Ball, and that until such security for costs be given all further proceedings in this cause be stayed against the said defendant
35 W'm J. Ball.

It is further ordered that the said defendant have leave to move for further security in the progress of the cause, if necessary.

No. 12.—Bond for costs of W'm McBurney.

In the circuit court.

UNITED STATES OF AMERICA,
South Carolina District:

Be it remembered that, on the twenty-fourth day of Nov., anno Domini 1866, and of the Independence and Sovereignty of the United States of America the ninety-first, personally appeared Rawlins Lowndes, who submitting *themselves* to the jurisdiction of this honorable court, bind and oblige *themselves* and *each of them*, *their several and respective* heirs, executors, and administrators, to William McBurney, one of the defendants in a bill in equity filed by Caroline Carson against him and others in circuit court of So. Ca., in the sum of two hundred and fifty dollars. Whereas a case has been instituted in this honorable court, and is now depending therein for relief & account, & the court has ordered that proceedings be suspended, &c., until security for costs in the sum of two hundred & fifty dollars be given:

The condition of the above obligation is such, that if the above-bounden Rawlins Lowndes shall ratify and confirm all acts whatsoever which compl't's solicitor shall do in the premises on compl't's be-
36 half; also shall personally appear in said court as often as he *or they* shall be thereunto required, and abide in the judgement of the court or any other court to which an appeal may be made in this

case, and pay all such costs, charges, expenses, and damages as shall be decreed, taxed, or assessed against *them or either of them*; and in default thereof do hereby consent that execution shall immediately issue against *them or either of them, their or either of their* heirs, executors, or administrators, goods and chattels, to the value of the same, then this obligation to be void and of none effect; or else to be and remain in full force and virtue.

(Signed) RAWLINS LOWNDES.

Taken and acknowledged in the presence of—
(Signed) JOSEPH GUTMAN, JR.,
U. S. Commissioner, S. D. & S.

(Endorsed on stipulation:) I hereby appoint James Lowndes my attorney to sign a stipulation or security-bond for costs, in my name, in the case of Carson vs. Robertson et al.

Witness my hand at New York this 24th Nov'r, 1866.
(Signed) RAW'S LOWNDES. [L. S.]
In presence of—
JOSEPH GUTMAN, JR,,
U. S. Commissioner, S. D. N. Y.

37 (Duplicate.)

U. S. OF AMERICA, *So. Ca. Dist.*

Circuit court. In equity.

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Bill of complaint.

Ja's Lowndes, comp's sol'r; E. McCrady & Son, for def'd't McBurney.

I hereby consent that if compl't be cast in the above case and do not pay the costs, I agree to pay the same to the extent of two hundred and fifty dollars, and consent that execution of fi. fa. and ca. sa. do issue against me.

Witness my hand and seal at New York, 24th Nov., 1866.
(Signed) RAW'S LOWNDES. [L. S.]
In presence of—
JOSEPH GUTMAN, JR.,
U. S. Commissioner for New York Southern District.

UNITED STATES OF AMERICA,
Southern District of New York:

On the 24th day of November, A. D. 1866, before me personally appeared Rawlins Lowndes, to me known to be the individual described in, and who executed the within and annexed bond and the consent and power thereon endorsed, and acknowledged that he executed the
38 same for the uses and purposes therein set forth respectively.

In witness whereof I have hereunto set my hand and seal the day and year above written.

(Signed) JOSEPH GUTMAN, JR.,
U. S. Commissioner S. D. & S.

No. 13.—Bond for costs of Alexander Robertson.

In the circuit court.

UNITED STATES OF AMERICA,
South Carolina District:

Be it remembered that, on the twenty-fourth day of Nov., A. D. 1866, and of the Independence and Sovereignty of the United States of America the ninety-first, personally appeared Rawlins Lowndes, who submitting *themselves* to the jurisdiction of this honorable court, bind and oblige *themselves and each of them, their several and respective* heirs, executors, and administrators to Alexander Robertson, one of the defendants, in a bill in equity filed by Caroline Carson against him and others in circuit court of the United States for So. C'a, in the sum of one hundred dollars. Whereas a case has been instituted in this honorable court, and is now depending therein for relief & account, & the court has ordered that proceedings be suspended till security for costs in the sum of one hundred dollars be given:

The condition of the above obligation is such, that if the above-bounden Rawlins Lowndes shall ratify and confirm all acts
39 whatsoever which compl'ts solicitor shall do in the premises on compl't's behalf; also shall personally appear in said court as often as he *or they* shall be thereunto required, and abide in the judgement of the court, or any other court to which an appeal may be made in this case, and pay all such costs, charges, expenses, and damages as shall be decreed, taxed, or assessed against *them or either of them*, and in default thereof do hereby consent that execution shall immediately issue against *them or either of them, their or either of their* heirs, executors, or administrators, goods and chattels to the value of the same, then this obligation to be void and of none effect; or else to be and remain in full force and virtue.

RAW'S LOWNDES. [L. S.]

Taken and acknowledged in the presence of—
JOSEPH GUTMAN, JR.,
U. S. Commissioner, S. D. & S.

(Endorsed on stipulation:) "I hereby appoint James Lowndes my attorney to sign a stipulation or security-bond for costs, in my name, in the case of Carson vs. Robertson et al.
Witness my hand at New York, this 24th day of November, 1866.
(Signed) RAW'S LOWNDES.
In presence of—
JOSEPH GUTMAN, JR.,
U. S. Com's'r, S. D. N. Y.

40 (Duplicate.)

U. S. OF AMERICA,
So. Ca. District, in equity:

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Bill of complaint.

Ja's Lowndes, comp'l't sol'r; H. E. Young sol'r of A. Robertson.

I hereby consent that if compl't be cast in the above case, and do not pay the costs, I agree to pay the same to the extent of one hundred dollars, and consent that executions of fi. fa. and ca. sa., do issue against me.

Witness my hand and seal at New York this 24th day of November, 1866.

(Signed) RAW'S LOWNDES. [L. S.]

In presence of—

JOSEPH GUTMAN, JR.,
U. S. Com'sr, S. D. & S.

UNITED STATES OF AMERICA,
Southern District of New York:

On this 24th day of November, A. D. 1866, before me personally appeared Rawlins Lowndes, to me known to be the individual described in and who executed the within and annexed bond, and the consent and power thereon endorsed, and acknowledged that he executed the same for uses and purposes therein set forth respectively.

41 In witness whereof I have hereunto set my hand and seal the day and year above written.

JOSEPH GUTMAN, JR.,
U. S. Commissioner, S. D. & S.

No. 14.—*Bond for costs of W. J. Ball.*

In the circuit court.

UNITED STATES OF AMERICA,
South Carolina District:

Be it remembered that, on the twenty-fourth day of Nov., A. D. 1866, and of the Independence and Sovereignty of the United States of America the ninety-first, personally appeared Rawlins Lowndes, who, submitting *themselves* to the jurisdiction of this honorable court, bind and oblige *themselves, and each of their several and respective* heirs, executors, and administrators, to William Ball, one of the defendants in a bill in equity filed by Caroline Carson against him and others in circuit court of the United States for So. Ca., in the sum of two hundred and fifty dollars.

Whereas a case hath been instituted in this honorable court, and is now depending therein for relief and account, & the court has ordered that proceedings be suspended till security for costs in the sum of two hundred and fifty dollars be given:

The condition of the above obligation is such, that if the above-
42 bounden Rawlins Lowndes shall ratify and confirm all acts whatsoever, which compl't's solicitor shall do in the premises on compl't's behalf; also shall personally appear in said court as often as he *or they* shall be thereunto required, and abide in the judgement of the court, or any other court to which an appeal may be made in this case, and pay all such costs, charges, expenses, and damages as shall be decreed, taxed, or assessed against *them or either of them*, and in default thereof, do hereby consent that execution shall immediately issue against *them or either of them, their or either of their* heirs, executors, administrators, goods, and

chattels to the value of the same, then this obligation to be void and of none effect; or else to be and remain in full force and virtue.

(Signed) RAW'S LOWNDES. [L. S.]

Taken and acknowledged in the presence of—

(Signed) JOSEPH GUTMAN, JR.,
U. S. Commissioner, S. D. & S.

(Endorsed on stipulation:) I hereby appoint James Lowndes my attorney to sign a stipulation or security-bond for costs, in my name, in the case of Carson vs. Robertson et al.

Witness my hand in New York this 24th day of November, 1866.

(Signed) RAWL'S LOWNDES.

In presence of—

JOSEPH GUTMAN, JR.,
U. S. Commissioner, S. D. N. Y.

43 (Duplicate.)

U. S. OF AMERICA,
So. Ca. District. In equity:

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Bill of complaint.

James Lowndes, comp's sol'r; Simons & Simons for def't Wm. Ball.

I hereby consent that if compl't be cast in the above case & do not pay the costs, I agree to pay the same to the extent of two hundred & fifty dollars & consent that execution do issue against me both fi. fa. & ca. sa.

Witness my hand & seal at New York, Nov. 24th, 1866.

(Signed) RAWL'S LOWNDES. [L. S.]

In presence of—

JOSEPH GUTMAN, JR.,
U. S. Commissioner, S. D. & S.

UNITED STATES OF AMERICA,
Southern District of New York:

On this 24th day of November, A. D. 1866, before me personally appeared Rawlins Lowndes, to me known to be the individual
44 described in and who executed the within and annexed bond, and the consent and power thereon endorsed, and acknowledged that he executed the same for the uses and purposes therein set forth respectively.

In witness whereof I have hereunto set my hand and official seal the day and year above written.

(Signed) JOSEPH GUTMAN, JR.,
U. S. Commissioner, S. D. & S.

No. 15.—Bond for costs of J. F. Blacklock.

In the circuit court.

UNITED STATES OF AMERICA,
South Carolina District:

Be it remembered that, on the twenty-fourth day of Nov., A. D. 1866, and of the Independence and Sovereignty of the United States of

America the ninety-first; personally appeared Rawlins Lowndes, who, submitting *themselves* to the jurisduction of this honorable court, bind and oblige *themselves* and *each of them, their several and respective* heirs, executors, and administrators, to John F. Blacklock, one of the defendants in a bill in equity filed by Caroline Carson against him and others in circuit court of the United States for So. Ca., in the sum of one hundred dollars.

Whereas, a case hath been instituted in this honorable court, and is now depending therein for relief & account, & the court
45 has ordered that proceedings be suspended till security for costs in the sum of

The condition of the above obligation is such, that if the above-bounden Rawlins Lowndes shall ratify and confirm all acts whatsoever, which compl't's solicitor shall do in the premises on compl't's behalf; also shall personally appear in said court as often as he *or they* shall be thereunto required, and abide in the judgment of the court or any other court to which an appeal may be made in this case, and pay all such costs, charges, expenses, and damages as shall be decreed, taxed, or assessed against *them or either of them*, and in default thereof do hereby consent that execution shall immediately issue against *them or either of them, their or either of their* heirs, executors, or administrators, goods, chattels, to the value of the same, then this obligation to be void and of none effect; or else to be and remain in full force and virtue.

(Signed) RAW'S LOWNDES [L. S.]

Taken and acknowledged in the presence of—
JOSEPH GUTMAN, JR.,
U. S. Commissioner, S. D. & S.

(Indorsed on stipulation:) I hereby appoint James Lowndes my
46 attorney to sign a stipulation or security-bond, in my name, for costs in the case of Carson vs. Robertson et al.

Witness my hand at New York this 24th day of Nov., 1866.

(Signed) RAW'S LOWNDES, [SEAL.]

In presence of—
JOSEPH GUTMAN, JR.,
U. S. Commissioner, S. D. N. Y.

(Duplicate.)

U. S. AMERICA, *So. Ca. District:*

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Bill of complaint.

Ja's Lowndes, comp's sol'r; B. H. Rutledge, sol'r for J. F. Blacklock.

I hereby consent that if compl't be cast in the above case & do not pay the costs, I agree to pay the same to the extent of one hundred dollars and consent that execution of fi. fa. & ca. sa. do issue against me.

Witness my hand and seal at New York Nov. 24th 1866.
(Signed) RAW'S LOWNDES, [L. S.]
In presence of—
JOSEPH GUTMAN, JR.,
U. S. Commissioner, S. D. & S.

UNITED STATES OF AMERICA,
Southern District of New York:

47 On this 24th day of November, A. D. 1866, before me personally appeared Rawlins Lowndes, to me known to be the individual described in and who executed the within and annexed bond, and the consent and power thereon endorsed, and acknowledged that he executed the same for the uses and purposes therein set forth respectively. In witness whereof I have hereunto set my hand and official seal the day and year above written.
(Signed) JOSEPH GUTMAN, J'R,
U. S. Commissioner, S. D. & S.

No. 16.—Substituted bill of complaint.

UNITED STATES OF AMERICA,
District of South Carolina,
Sixth Circuit. In equity:

To the judges of the circuit court of the United States for the district of South Carolina, sitting in equity:

Caroline Carson, of the city of New York, and a citizen of the State of New York, brings this her bill against Alexander Robertson, John Freer Blacklock, William McBurney, Elias Nonus Ball, all of the city of Charleston, and citizens of the State of South Carolina; and William Ball of St. John's Parish, a citizen of the State of South Carolina;
48 and William Carson and James Petigru Carson, both of the city of New York, and citizens of the State of New York.

And thereupon your oratrix complains and says that her late husband, William A. Carson, of the parish of St. John's Berkley, of Charleston District, in the State of South Carolina, having a very large amount of real and personal property, did, on or about the 11th day of March, in the year of our Lord one thousand eight hundred and fifty-four, (1854,) duly make, sign, and publish his last will and testament in writing, and did thereby specifically bequeath to your oratrix and her two sons, the said defendants William Carson and James Petigru Carson, various articles of his personal property; and did also further devise and bequeath thereby as follows:

"I order and direct my executors, or such one as may qualify hereon, to sell all the rest of my estate, real and personal, soon after my death, and upon such terms as he or they may deem most judicious. Until such sale takes place I order my executors to apply so much of the income of my estate to the maintenance of my wife and children and the education of the latter, as they or he, in their discretion, may deem fit and proper. From the balance of the income until the sale, and from the proceeds of sale, I order and direct my debts to be paid, and
49 then the residue of the purchase-money to be divided into three equal parts and held by my executors, or qualified executor, in trust for the following purposes:

"First. To pay the interest arising from one-third part thereof to my wife, Caroline Carson, for and during the term of her natural life; and the legacy and provision herein made for her shall be in lieu and bar of dower and every other claim she may set up upon my estate.

"Second. To pay and apply the interest arising from another third part thereof to the maintenance, education, and support of my son William Carson, during his minority, if they deem so much necessary; and, upon his attaining the age of twenty-one years, the capital and principal thereof and its accumulation, if any, to be paid over to him absolutely.

"And third. To pay and apply the interest arising from the remaining third part thereof to the maintenance, education, and support of my son James Petigru Carson, during his minority, if they deem so much necessary; and, upon his attaining the age of twenty-one years, the capital or principal thereof and its accumulation, if any, to be paid over to him absolutely.

"ITEM.—I give, devise, and bequeath all the rest and residue of
50 my estate, including the aforesaid third part after my wife's death to my two sons William Carson and James P. Carson, or the survivor of them, should either die under the age of twenty-one years.

"ITEM.—I nominate, constitute, and appoint my friends, Alexander Robertson and John Freer Blacklock, executors of this my last will and testament, and testamentary guardian of my children."

All of which said devises, bequests, directions, and appointments will more fully appear on reference to the copy of the said will hereunto annexed and marked Exhibit A.

And your oratrix further sheweth that her husband, the said William A. Carson, died on or about the 17th day of August, in the year of our Lord one thousand eight hundred & fifty-six, leaving his aforesaid will in full force; that the said will was duly proven in the court of ordinary for Charleston district, of the State of South Carolina, by the said Alexander Robertson and John Freer Blacklock, who took upon themselves the execution thereof and entered upon the real estate of the said William A. Carson and possessed themselves of all his personal property, and, among other things, of the wines and silver-plate of the said William A. Carson; that the said Alexander Robertson and John
51 Freer Blacklock, as executors aforesaid, sold the greater part of the real and personal property of the said testator, and having paid his debts and settled their accounts as executors as aforesaid, previously to the year of our Lord one thousand eight hundred and sixty-one, and having received for such services as executors a sum not less than ten thousand dollars ($10,000) out of the estate of the said testator, invested the balance of the proceeds of the sale in various lawful securities, and held the said securities and the rest of the estate of the said testator after the aforesaid settlement made by them in their character of executors, as trustees under the aforesaid will for the benefit of your oratrix and her infant sons, according to the trusts of the said will as hereinbefore set forth.

And your oratrix sheweth that, as she is informed and believes, the said Alexander Robertson and John Freer Blacklock, among other sales made by them as executors, did, towards the close of the year of our Lord one thousand eight hundred and fifty-six, (1856,) sell to the aforesaid Elias Nonus Ball a valuable plantation belonging to the estate of the said testator, known as "Dean Hall," and situated in Charleston district, of the State of South Carolina, and then received there-
52 for the bond of the said Elias Nonus Ball, conditioned for the payment to them of a large sum of good and lawful money, which

bond the said Elias Nonus Ball secured by a mortgage to the said Alexander Robertson and John Freer Blacklock, of the said "Dean Hall;" that the said Alexander Robertson and John Freer Blacklock, as executors, sold a large part of the personal property of the estate of the said William A. Carson to the said Elias Nonus Ball, and then received therefor the joint and several bond of the said Elias Nonus Ball and the said William Ball, conditioned for the payment to them, the said executors, of a large sum of good and lawful money; and that the said bonds constituted a large part of the securities held by the said Alexander Robertson and John Freer Blacklock, as trustees aforesaid, for the benefit of your oratrix and her infant sons, after the aforesaid settlement, as executors, and previously to the year of our Lord one thousand eight hundred and sixty-one, (1861.)

And your oratrix sheweth that, as she is informed and believes, the said William McBurney, at some time in April, of the year of our Lord one thousand eight hundred and sixty-three, (1863,) being desirous of purchasing from the said Elias Nonus Ball the said "Dean Hall,"
53 for certain illegal promissory notes issued in violation of the Constitution of the United States, advanced a large number of such notes to the said Elias Nonus Ball to enable him to obtain, by means of the said notes, from the said Alexander Robertson and John Freer Blacklock, a release of the aforesaid bond and satisfaction of the aforesaid mortgage of "Dean Hall," securing the same; that thereupon the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, accepted the said notes in payment of the said bond of the said Elias Nonus Ball, given by him to the said Alexander Robertson and John Freer Blacklock to secure the purchase-money of the said "Dean Hall;" that the said Alexander Robertson and John Freer Blacklock thereupon released the said bond and entered satisfaction, or agreed to enter satisfaction, upon the aforesaid mortgage of "Dean Hall," securing the said bond in consideration of the said illegal notes; and that thereupon the said Elias Nonus Ball, in consideration of the said illegal notes advanced or paid to him as aforesaid by the said William McBurney, the said Dean Hall plantation did convey to the said William McBurney.

And your oratrix further sheweth that the said Alexander Rob-
54 ertson and John Freer Blacklock, trustees as aforesaid, in consideration of certain other said illegal notes received by them from the said Elias Nonus Ball and William Ball released to the said Elias Nonus Ball and William Ball the aforesaid joint and several bond of the said Elias Nonus Ball and William Ball, held, as hereinbefore stated, by the said trustees for the benefit of your oratrix and for her infant sons.

And your oratrix further sheweth that she is the Caroline Carson named as legatee in the said will of her husband the said testator, and is and always has been willing and ready to accept the provision made for her in the said will in lieu of any claim she may have on the estate of the said testator; that her sons, the said William Carson and James Petigru Carson having attained the age of twenty-one years, and being citizens of New York, assigned to your oratrix all their right, title, and interest under the said will of the said testator, as will more fully appear from the copies of the said assignments hereto annexed, and marked Exhibits "B" & "C," of which assignments the said Alexander Robertson and John Freer Blacklock have had notice; that, by virtue of the said will and the said assignments, your oratrix is entitled to receive all the property held by the said Alexander Robertson
55 and John Freer Blacklock, as trustees under the said will.

And your oratrix further sheweth that, for more than five years, the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, have not paid to her any portion of the income to which she is entitled under the aforesaid will of the said testator, and, with the exception of certain small sums of illegal notes, from time to time paid to her son James Petigru Carson, then a minor, have paid nothing for the maintenance, education, or support of her sons, the said William Carson and James Petigru Carson; that, before the date of the above-mentioned assignments, your oratrix, both in her own right and as guardian of her said sons, and her two sons, repeatedly requested the said Alexander Robertson and John Freer Blacklock to account with them as trustees as aforesaid, and to pay to them the amount found due upon such account; that, since the above assignments, your oratrix, both as legatee and assignee, has repeatedly requested the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, to account with your oratrix and pay to her the amount due to her, or to transfer to her the property to which she is entitled under the will of the said William A. Carson; that your oratrix has been the more urgent in such requests of late, because she is informed and be-
56 lieves that, since the death of her said husband, he, the said Alexander Robertson, has become utterly insolvent, and the said John Freer Blacklock very much embarrassed in his pecuniary affairs; that the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, have nevertheless utterly refused so to do, and have refused to transfer to your oratrix any portion of the said property or to pay to your oratrix any monies to which she may be entitled, either as legatee or assignee, either as principal of the said estate of the said William A Carson or as interest thereon, though the said trustees are actually receiving such interest, or to make any provision for the maintenance or support of your oratrix or her sons: in consequence of which conduct of the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, your oratrix, though entitled to a liberal support and maintenance under the will of the said William A. Carson, is left entirely destitute, and being in bad health is barely able to support herself by her own labor.

And they, the said John Freer Blacklock and Alexander Robertson, trustees as aforesaid, though admitting to your oratrix, in general terms, their indebtedness to her, pretend that they are bound to pay over to her only about eight thousand dollars, and only upon
57 condition that your oratrix release to them all claims which she may have under the said will of the said William A. Carson, but your oratrix chargeth that such pretence is contrary to justice and the rules of equity, administered by this honorable court; and that the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, should, without delay, and without exacting conditions from your oratrix, pay over to her the amount due to her, and that such amount is about eighty thousand dollars (80,000.) And the said Alexander Robertson and John Freer Blacklock at other times pretend that, in settlement of their indebtedness to your oratrix, they are entitled to pay to your oratrix the illegal promissory notes and bonds of an unrecognized government, which notes and bonds had been issued in violation of the Constitution of the United States and are now utterly valueless; whereas, your oratrix chargeth that the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, could, in their character of trustees as aforesaid, only receive good and lawful money and invest the same in good and lawful securities, and that they cannot account to

your oratrix in illegal bonds and notes, issued in violation of the Constitution of the United States. And the said Alexander Robert-
58 son and John Freer Blacklock, trustees as aforesaid, sometimes pretend that they had full authority, under the will of the said William A. Carson, to change the investments they held, as such trustees; whereas, your oratrix charges that the said trustees had no right, by virtue of any power conferred upon them in the will of the said William A. Carson, to change good and lawful securities for others of doubtful value and illegal character, and that having done so they are, in equity, bound to account in good and lawful money to your oratrix for the said good and lawful securities so improperly changed by them, and that the title to such securities is not changed by such wrongful act of the said trustees, and that such securities must, in the hands of whomsoever they have come, be subject to the trusts of the will of the said William A. Carson; and your oratrix chargeth that the said Elias Nonus Ball, having procured his aforesaid bond, given to the said trustees and secured by his aforesaid mortgage of "Dean Hall," to be released and satisfaction to be entered on his said mortgage as aforesaid, in consideration of the said illegal notes, with full notice that the said bond and mortgage were held by the said Alexander Robertson and John Freer Blacklock, as trustees
59 for the benefit of your oratrix, then living in the State of New York, and her infant sons, can derive no advantage from the said discharge and release, but must account therefor to your oratrix; and your oratrix chargeth that, the said William McBurney, having purchased Dean Hall plantation from the said Elias Nonus Ball, for the said illegal notes, with full knowledge that the aforesaid mortgage thereon had been held by the said Alexander Robertson and John Freer Blacklock, as trustees, for the benefit of your oratrix, then absent as aforesaid, and her infant sons, and had been satisfied or agreed to be satisfied by the said trustees for the said illegal notes, transferred to them by the said Elias Nonus Ball, and having aided the said Elias Nonus Ball to procure such satisfaction, cannot hold the said "Dean Hall" plantation discharged of said mortgage; and your oratrix further chargeth that, the said Elias Nonus Ball and William Ball having procured their aforesaid joint and several bond to be released by the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, in consideration of the said illegal notes, and with full knowledge and notice that the said bond was held by the said trustees, for the benefit of your oratrix, then living in the State of New York, and
60 her infant sons, can take no benefit from such release, and are in equity bound to account to your oratrix for the said bond.

In tender consideration whereof, and to the end that all the said defendants may, upon their respective corporal oaths, full, true, and perfect answer make to all and singular the matters hereinbefore set forth, as particularly as if they were thereto specially interrogated; and that the said Alexander Robertson and John Freer Blacklock may show what disposition they have made of the wines and silver plate belonging to the estate of the said William A. Carson; and that the said Alexander Robertson and John Freer Blacklock may show at what precise time they both, and each of them, entered satisfaction on the said mortgage they held on "Dean Hall" plantation, and by what authority they so entered satisfaction and released the bonds of the said William Ball and Elias Nonus Ball; that, in case the said Alexander Robertson and John Freer Blacklock have not entered satisfaction on the said mortgage, they may be enjoined from so doing; and that the said Alexander Robertson and

John Freer Blacklock may answer whether they have not refused to account with your oratrix, and to pay to her the amount due to
61 her, and have alleged as their reason for so doing that they are entitled to a general release from your oratrix, of all claims she may have against them or either of them and trustees, as a precedent condition of their so accounting; and that the said Alexander Robertson and John Freer Blacklock may be ordered to account fully with your oratrix in the premises, and to pay over the amount due to her; and that the said Elias Nonus Ball may be ordered to deliver up the said bond given for the purchase money of Dean Hall, and the said mortgage deed given by him to secure the said bond, and may be decreed to pay the amount due upon the said bond; and that the said Elias Nonus Ball and William Ball may be ordered to deliver up their aforesaid joint and several bond, and be decreed to pay the amount due thereon; and that the said Dean Hall plantation be declared subject to the lien of the before-mentioned mortgage thereof, and that the said mortgage be foreclosed; and that, in the meantime, the said William McBurney be enjoined from conveying the said Dean Hall, and from committing waste thereon:

May it please your honors to grant to your oratrix, not only writs of injunction enjoining the said Alexander Robertson and John Freer Blacklock and William McBurney, in the premises, but also a writ or
62 writs of subpœna, directed to the said Alexander Robertson, John Freer Blacklock, Elias Nonus Ball, William McBurney, William Ball, William Carson, and James Petigru Carson, commanding them, under a certain pain and upon a certain day therein named, to appear before your honors in this honorable court, then and there to answer all and singular the premises, and to then abide and perform such orders and decrees as to your honors shall seem meet.

And your oratrix will ever pray.

(Signed) JAMES LOWNDES,
Compl't's Solicit'r.

(Endorsed:) Filed 11 August, 1866. Substituted for original bill of this date on the 14 Dec'r, 1866.

No. 17.—Order confirming security given and allowing further time for Wm. Ball & Wm. McBurney to plead.

WEDNESDAY, 6 *Feb'y*, 1867.—The court was opened at 11 o'clock, a. m., Hon. George S. Bryan, dist. judge, presiding.

CAROLINE CARSON
vs. } Bill for relief.
ALEX. ROBERTSON ET AL.

Magrath & Lowndes, compl't's sol'rs; Ja's Simons for W. J. Ball; E. McCrady for W. McBurney.

Motion was made to suspend proceedings, till the order for se-
63 curity for costs had been complied with. The court refused the motion, considering the security which the clerk of the court had taken as a compliance with the order of the . The court then granted the following order on hearing counsel: That the defendants William Ball and William McBurney have further time, until the rules day, being first Monday of March, to file their respective pleas, answers, or demurrers, to the bill of complaint, with subpœnas upon which they have been served.

No. 18.—Demurrer of W'm McBurney.

THE UNITED STATES OF AMERICA,
Sixth Circuit, District of South Carolina. In equity:

The demurrer of William McBurney, one of the defendants to the bill of complaint of Caroline Carson.

This defendant, by protestation, not acknowledging or confessing all or any of the matters and things in the said complainant's bill contained to be true, in such manner and form as the same are therein and thereby set forth, doth demur thereto, and for cause of demurrer saith that the said bill doth not contain sufficient matter of equity whereupon this honorable court can ground any decree in favor of the said
64 complainant, or give the said complainant any relief against this defendant, and therefore, and for other defects and divers other causes of demurrer appearing in the complainant's said bill, this defendant doth demur thereto, and humbly demands the judgement of this honorable court, whether he shall be compelled to make any answer to the said bill; and prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) McCRADY & SON,
Def'ts' Sol'rs.

We hereby certify that, in our opinion, the above demurrer in this case is well founded in point of law.

(Signed) McCRADY & SON, *Counsel.*

Filed 4 March, 1867.

THE UNITED STATES OF AMERICA,
Sixth Circuit, District of South Carolina:

Personally appeared before me William McBurney, the defendant above named, who, being duly sworn, saith the demurrer above is not interposed for the purpose of delay.

(Sig.) W'M McBURNEY.

Sworn to before me this 4th day of March, 1867.

(Sig.) DAN'L HORLBECK,
C. & Com'r U. S. for So. Ca.

65 *No. 19.—Demurrer of W. J. Ball.*

In the circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

The separate demurrer of William J. Ball, a citizen of the State of South Carolina, one of the defendants, who is jointly impleaded with Alexander Robertson, John Freer Blacklock, William McBurney, Elias Nonus Ball, William Carson, and James P. Carson, to the bill of complaint of Caroline Carson, a citizen of New York.

This defendant, by protestation, not confessing or acknowledging all or any of the matters in and by the said bill set forth and complained of to be true, in manner and form as they are therein and thereby set

forth and alleged, says he is advised there is no matter or thing in the complainant's said bill of complaint contained, good and sufficient in law to call the defendant to account in this honorable court for the same, and that there is good cause of demurrer thereunto, and he does demur thereto accordingly, and for cause of demurrer says that the complainant's said bill of complaint, in case the same *are* true, which this defendant in no wise admits, contains not any matter of equity wherein this court can ground any decree or give the complainants any relief or assistance as against this defendant; wherefrom and for divers other errors and defects in complainant's said bill of complaint contained, and
66 appearing on the face thereof, this defendant does, as aforesaid, demur in law thereunto, and humbly prays the judgement of this honorable , whether he is compellable or ought to make any answer thereunto otherwise than as aforesaid. And this defendant prays to be hence dismissed with his costs and charges in this behalf sustained.

(Signed) SIMONS & SIMONS,
Def't's Sol'rs.

Filed 4th March, 1867.

No. 20.—Answer of McBurney.

THE UNITED STATES OF AMERICA,
Sixth Circuit, District of South Carolina. In equity:

The separate answer of William McBurney, one of the defendants, a citizen of South Carolina, to the bill of complaint of Caroline Carson, a citizen of the State of New York.

This defendant, now and at all times hereafter saving and reserving to himself all benefit and advantage of exception to the manifold errors, uncertainties, and insufficiencies of complainant's said bill of complaint, for answer thereto, or to so much thereof as he is advised it is material or necessary for him to answer unto, answering, says he admits
67 that the late William A. Carson, mentioned in the said bill, did make his last will and testament, bearing the date in the said bill mentioned, in which, after certain legacies mentioned in the said bill, he ordered and directed his executors, or such one as might qualify thereon, to sell all the rest of estate, real and personal, as soon after his death and upon such terms as he or they might deem most judicious, with such other directions and provisions as are recited in the said bill, and thereof appointed this defendant's codefendants, Alexander Robertson and John F. Blacklock, executors.

And this defendant, further answering, also admits that the said William A. Carson died on or about the day and year mentioned in the said bill, leaving his will in force; that the said will was duly proved before the ordinary for Charleston district, in the State of South Carolina, by the said executors named therein, who took upon themselves the execution thereof; but he knows nothing of the general conduct of the said executors in reference to their management of the estate of their testator.

And this defendant, further answering, admits that the said executors of the said testator did, on or about the second day of February, in the year of our Lord eighteen hundred and fifty seven, sell and convey to Elias Nonus Ball a plantation in St. John's Parish, known as "Dean Hall," and, for part of the purchase-money thereof, took the bonds
68 of the said purchaser to themselves as such executors, conditioned

altogether for the payment of thirty-five thousand dollars, and, to secure the same, took a mortgage of the said plantation also to themselves as such executors, which bonds and mortgages bore the same date as the said conveyance.

And this defendant, further answering, says he cannot admit that the said Elias Nonus Ball sold to him (this defendant) the plantation called Dean Hall, because the same is not true; but, as he is ready to answer fully to the said allegation, he says the truth is thus: That, in the month of December, A. D. 1862, the mercantile firm of Hyatt, McBurney & Co., whereof Edmund Hyatt, a citizen of the State of New York, this defendant, William Hasseltine, Alfred L. Gillespie, and Thomas R. McGhan, then citizens of the State of South Carolina, were the members and partners, having a large amount of cotton on hand, and being unable, by reason of the war then raging and the blockade of the port of Charleston, to carry on their business as dry-goods merchants, were willing to change some of their investments into real estate until peace should be restored; and, in consideration and at the suggestion of William Whaley, esquire, who was then cultivating
69 the said plantation, "Dean Hall," upon some contract with the said Elias Nonus Ball, that the said plantation might be purchased at a fair price, and his recommendation of the purchase, upon consultation with the other parties of the said firm of Hyatt, McBurney & Co., this defendant authorized the said William Whaley to treat for the purchase of the said plantation, which treaty finally brought the said Elias Nonus Ball and the said Hyatt, McBurney & Co. to a contract of sale and purchase some time in the month of March, A. D. 1863, respecting the said plantation, at the price of one hundred thousand dollars cash; that, upon this treaty, the late James L. Petigru, esquire, (as this defendant has understood and believes and hopes to prove,) who was then, and always had been, the legal adviser of the said executors of the said William A. Carson, who was the father of the complainant and grandfather of this defendant's codefendants William Carson and James Carson was not only informed, but consulted by the said executors, or one of them, and not only approved, but urged the completion of the said treaty and contract with the express and avowed purpose of having the bonds and mortgage of the said Elias Nonus Ball to the said executors of the said William A. Carson paid off and satisfied of the purchase-money; that, under these circumstances, this defendant and his copartners had good reason to believe, and did
70 believe that the said contract of purchase was fair and equal, and that they hoped would prove advantageous to both parties to the contract; that, in pursuance of the said contract, the said Hyatt, McBurney & Co., as soon as the title to the said plantation had been examined and approved by their solicitor, and before the conveyance hereinafter mentioned was made and executed, on or about the 23d day of April, in the year last aforesaid, paid on account of the purchase-money to the said Elias Nonus Ball more than eighty thousand dollars, to enable him to pay off his bonds to the said executors of the said Willam A. Carson, and satisfy the said mortgage thereon; and that the said Elias Nonus Ball afterward, in and by his certain deed-poll bearing date the seventh day of May, in the year last aforesaid, for and in consideration of the said sum of one hundred thousand dollars therein written and expressed, conveyed the said plantation to this defendant and Alfred L. Gillespie, one of his partners: To have and to hold the said plantation unto this defendant and the said Alfred L. Gillespie, and the survivors of them, and the heirs and assigns of such survivor,

forever; but to and for such uses, intents, and purposes as they, the said William McBurney and Alfred L. Gillespie, or the survivor of them shall, by any deed in writing, duly signed by them or him, in presence of two witnesses, from time to time limit, direct, and appoint, and, until such limitation, direction, or appointment, to the only
71 proper use and behoof of Edmund Hyatt, William Hasseltine, Thomas R. McGahn, and the said William McBurney and Alfred L. Gillespie, their respective heirs and assigns, in such shares, interest, and proportions as they are now entitled to in the capital and profits of the present copartnership of Hyatt, McBurney & Co., which said deed was immediately, that is to say, on the day next after the date thereof, duly recorded in the office of the register of mesne conveyance for the district of Charleston, in the State of South Carolina; all of which will fully appear upon reference to the said original deed now in this defendant's hands ready to be produced; and he craves leave to refer to the same as often as may be necessary in the progress of this cause.

And this defendant, further answering, says that the said copartnership of Hyatt, McBurney & Co., being about to expire, that is to say, on the 31st day of May last aforesaid, the said Edmund Hyatt, between the purchase of the said plantation and the conveyance hereinbefore mentioned, sold his interest in the said copartnership property and assets to this defendant and the other copartners, and in and by his certain deed of release, bearing date the 8th day of May, A. D. last aforesaid, (1863,) released his interest in the said plantation, so that the said interest should enure to the only proper use and behoof of this defendant, William Hasseltine, Alfred L. Gillespie and Thomas R.
72 McGahn, their respective heirs and assigns, in such shares, interests, & proportions as they lately had as copartners in the capital and profits of the late copartnership of Hyatt, McBurney & Co., which deed was very soon after, to wit, on the fifteenth day of the month and year last mentioned, recorded in the office of the register of mesne conveyance' for the district and State aforesaid, as will fully appear upon reference to the said deed in this defendant's hands, ready to be produced, and to which he craves leave to refer as he may have occasion. And therefore, to secure a bond of the other partners to the said Edmund Hyatt, conditioned for the payment of forty thousand dollars, given for the purchase of his interest in the said firm of Hyatt, McBurney and Co., this defendant, and the said Alfred L. Gillespie, by their deed, signed in the presence of two witnesses, bearing date the same day last aforesaid, declared, limited, and appointed the said plantation to the use of the said Edmund Hyatt, his heirs and assigns, as a mortgage to secure the said bond, which was also soon after recorded in the office aforesaid, as will fully appear upon reference to the said office and the record of the said deed; and this defendant further says that the said Edmund Hyatt is now, and was at the time
73 of the filing of the complainant's said bill, a citizen of the State of New York, the same State whereof the complainant herself avers herself to be a citizen; that the said William Hasseltine is now, and was at the time of the filing of the said bill resident and domiciled at or near Liverpool, in the kingdom of England, and that Alfred L. Gillespie and William R. McGahn were citizens of South Carolina, at the filing of the said bill; but that the said Alfred L. Gillespie has since removed to New York.

And this defendant further says that Elias Nonus Ball, one of his codefendants, he has understood and believes, was at the time of the filing of the said bill residing, and for some time before had resided in

the State of New Jersey, but as he is informed now resides in the State of Pennsylvania. And this defendant insists that the said Edmund Hyatt, William Hasseltine, Alfred L. Gillespie, Thomas R. McGahn, and Elias Nonus Ball are necessary parties, and in fact indispensible parties to the said bill, three of whom are out of the jurisdiction and beyond the reach of the process of this court, and one of these, Edmund Hyatt, in fact a citizen of the State whereof the complainant herself avers herself to be a citizen. And he, this defendant, relies upon this
74 want of parties now stated and shown to the court as an insuperable objection to the jurisdiction of this court sitting as a court of equity, and claims to be allowed to insist upon this want of parties in the same manner as if he had pleaded the same to the said bill.

And this defendant, further answering, says that, as to the currency in which the purchase and payments were made by the said Hyatt, McBurney & Co., it was that which was universally in use throughout the community as money, and wherewith all purchases and payments of every kind were made, which were received in deposit by all the banks of the State of South Carolina at that time, and the said Hyatt, McBurney & Co. did not pay the said purchase-money in any other manner than by their checks on the Bank of South Carolina, and all other liens upon the said plantation, of which there were at least seven judgments, were paid off and satisfied by the said Elias Nonus Ball, out of the said purchase-money.

And this defendant, further answering, says that there is no truth in the assertion, if such is intended to be made in the said bill, that the said currency so paid for the said plantation was of no value; but, on the contrary, this defendant avers that it was at that time of great
75 value, and was a high price for the said plantation, and to raise this sum the said Hyatt, McBurney & Co. had to sell more than six hundred bales of cotton, which was after the war worth a great deal more than one hundred thousand dollars in the legal tender Treasury notes of the United States, and even at this present time would bring the said sum ($100,000) in the said notes last mentioned. And so this defendant says that the said Hyatt, McBurney & Co. were bona-fide purchasers, for valuable consideration, and that without any notice whatever which can affect them with the trusts stated in the said bill, because the said Hyatt, McBurney & Co. dealt with the said Alexander Robertson and John Freer Blacklock, as executors of their testator, holding securities for the purchase-money of the property, they were authorized and empowered to sell, and not as trustees changing an investment; and even if they erred in making improper investments of the money paid to them, (which this defendant is advised is not so,) the said Hyatt, McBurney & Co. could not be made liable, as the discharge and release of the said mortgage was entirely within the power and authority of the said executors, in virtue of their office as executors, and this he hopes to unite in pleading in bar to any suit in equity brought by the complainant, wherein all the proper parties are
76 made; or, should his objection for the want of parties be overruled, he then craves the benefit of the same for himself alone.

And this defendant, further answering, says that as to the matters in the said bill charged and alleged against his codefendant, William Ball, he of course knows nothing, but he humbly submits to this court that he, this defendant, is joined with the said William Ball in one suit, when it appears upon the statements and allegations therein, that the said bill is for several and distinct causes and matters that have no re-

lation to or dependence upon each other, and that the said bill is therefore liable to the objection of multifariousness, which he now insists upon. And this defendant humbly submits to this honorable court, that in any event, according to the rules and principles of this honorable court, the complainant being a mere volunteer as to all the estate of the late testator, William A. Carson, save only and except her life-interest in one-third thereof, having paid nothing whatever for the portions thereof bequeathed and devised to her sons, and by them assigned to her without consideration, cannot claim against purchasers for valuable consideration any more than her interest in one-third of said estate for her life.

77 And this defendant denies all and all manner of combination and confederacy wherewith he is by the said bill charged, without there is any other matter, cause, or thing in the complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, avoided, traversed, or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and hereby prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) W'M McBURNEY,
" McCRADY & SON,
Def'dt's Sol'rs.

THE UNITED STATES OF AMERICA,
Sixth Circuit, District of South Carolina:

Personally appeared before me William McBurney and made oath that the facts and things contained in his foregoing answer, as far as they are derived from his own knowledge are correct and true, and as far as they are derived from the information of others he believes them to be true.

78 (Signed) W'M McBURNEY.

Sworn to before me this 4 March, 1867.

DAN'L HORLBECK,
Clerk & Com. C. C. U. S., So. Ca.

(Endorsed:) This answer is filed with a protest that the complainant had no right or authority to substitute the bill of the 14 Dec'r, 1866, in the place of the bill filed on 11th August, 1866: the said bill is not properly on file, and no subpœna thereon has been served. This defendant claims that if it should be so ruled, this defendant shall have leave to withdraw this answer from file.

(Signed) McCRADY & SON.
MARCH 4TH, 1867.

Filed 4th March, 1867.
(Signed) DAN'L HORLBECK,
C. C. U. S. for So. Ca.

No. 21.—Answer of W. J. Ball.

In the circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

The separate answer of William J. Ball, who is jointly impleaded with Alexander Robertson, John Freer Blacklock, Elias Nonus Ball, Wil-

liam McBurney, William Carson, and James P. Carson, to the bill of complaint of Caroline Carson.

79 This defendant, now and at all times saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, and insufficiencies in complainant's bill of complaint contained, for answer thereto or unto such parts thereof as this defendant is advised is material for him to answer unto, answering, says that he was the surety to a bond of his codefendant, Elias Nonus Ball, conditioned to pay the sum of about thirty thousand dollars to Alexander Robertson and John Freer Blacklock, executors of the last will and testament of William A. Carson, deceased, for the credit portion of the purchase-money of certain slaves which belonged to the testator and were sold by the said executors to the said Elias Nonus Ball, as this defendant was informed; that he does not remember the date of the said bond or its exact amount; that he was informed by the said Elias Nonus Ball some time after the said bond was executed, that the same was paid in full and that this defendant was discharged therefrom as surety, and the bond delivered up to the said Elias Nonus Ball; that he does not know how or when the said bond was paid, and had no part in its payment in any manner whatsoever. And this defendant further says that he knows nothing of any of the matters stated in the bill, except as he has above stated.

80 This defendant, further answering, says that he is advised that the said Elias Nonus Ball was a citizen and resident of the State of Pennsylvania, in the United States of America, at the time of the exhibiting of the complainant's bill of complaint, and now at this time is still a citizen and resident thereof; and that it is material and indispensable that the said Elias Nonus Ball should be a party to the complainant's proceedings in any such matters as those alleged by her in her bill of complaint; and that no decree can be made according to justice and equity between the several parties in complainant's bill of complaint named unless the said Elias Nonus Ball should be brought before the court as a party to the proceedings.

And this defendant prays he may be allowed the same benefit of this defence as if he had pleaded the same by plea.

And this defendant having fully answered prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

(Signed) SIMONS & SIMONS,
Def'ts' Sol'rs.

Personally appears William J. Ball, who, being duly sworn, says that the facts set forth in the foregoing answer are true and correct, as far as they are within his own knowledge, and as far as he derives
81 them from the information of others he believes them to be true.

(Signed) W. J. BALL.

Sworn to before me this 2d March, 1867.

DAN'L HORLBECK,
C. C. C. U. S. for So. Ca.

(Endorsed:) This answer is filed with a protest that this complainant had no right or authority to substitute the bill of 14 Dec'r, 1866, in place of the bill filed 11 August, 1866. The said bill is not properly on file, and no subpœna thereon has been served. Defendant claims that if it

it should be so ruled, defendant should have leave to withdraw this answerfrom the file.

(Signed) SIMONS & SIMONS.

MARCH 4TH, 1867.

Filed 4th March, 1867.

DAN'L HORLBECK,
C. C. U. S. for So. Ca.

No. 22.—Answer of Blacklock.

UNITED STATES OF AMERICA,

District of South Carolina, Fifth Circuit. In equity:

The answer of John F. Blacklock, one of the defendants, to the bill of complaint of Caroline Carson, complainant.

This defendant, now and at all times hereafter saving and re-
82 serving unto himself all benefit of exception which can or may be taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or to so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, says:

That he admits that William A. Carson, of the parish of Saint John's Berkley, State aforesaid, died in August, anno Domini one thousand eight hundred and fifty-six, and that the statements in said complainant's said bill are correct, so far as they relate to the disposition of the will of said W. A. Carson, deceased, and also as to the appointment of said defendant with his codefendant, Alexander Robertson, as executors thereof.

He admits also that he qualified on said will, as executor, together with Alexander Robertson aforesaid, and joined with him in the sales of the plantation "Dean Hall," with the negro slaves attached thereto to Elias Nonus Ball, and also in the sales of the other personal property to sundry other persons, a full description of which transaction is contained in the answer of his codefendant Alexander Robertson, the statements of which this defendant is cognizant of, and that he shared in the commissions legally accruing to the executors on said sales.

83 That some two or three years subsequently to the making of the said sales, upon the breaking out of the civil war which lately distracted this country, on or about the tenth day of May, A. D. one thousand eight hundred and sixty-one, this defendant left the State of South Carolina and took up his residence in Liverpool, England, and there remained during the whole continuance of the said war, and until some time after the cessation of hostilities between the two sections and until the authority of the United States was fully restored, to wit, until the 23 October, A. D. 1867.

That, previous to his leaving the country as aforesaid, and up to the time of his departure therefrom, the said Ball had paid but a small portion of the interest-money on his said bonds; and this defendant and his codefendant supplied the wants of complainant and her family by advances of money, the precise amount of which it is difficult to ascertain at the present time on account of the loss of papers during the recent convulsion. That, subsequently to his departure from the country as

aforesaid, said property remained entirely in the hands of his codefendant Alexander Robertson, and he has not intermeddled in any way with the affairs of the said trust estate since that date; that he has not consulted relative to the change of investment of the funds of said
84 estate, nor did he share in any commissions resulting therefrom, nor was he indeed aware of the said change of securities that had been made until some time after said transaction was completed.

That he did not consent to the acceptance of confederate money in payment of the bonds aforesaid, nor to the investment of the same in confederate bonds, and has not released any lien which said executors may have had on any property, whatsoever, nor satisfied any mortgage for the securing payment of any money-obligations due said trust estate; and, since the day of the date of his departure from the country above mentioned is altogether unconnected with any transactions affecting the management, disposition, or arrangement of said trust; and this defendant, further answering, says that, under such circumstances, he cannot be held legally responsible for any losses complained of, and prays that he may be released and discharged from all liability and responsibility in connection with said trust. And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in said complainant's said bill of complaint contained, material or necessary for this defendant to make answer
85 unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to maintain, aver, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) J. F. BLACKLOCK,
" B. H. RUTLEDGE,
Def't's Sol'r.

Sworn to before me this 13 February, 1867.
(Si'g) H. E. YOUNG,
Magistrate.

No. 23.—Answer of Robertson.

UNITED STATES OF AMERICA,
District of South Carolina, Fifth Circuit.—In equity:

The answer of Alexander Robertson, one of the defendants to the bill of complaint of Caroline Carson, complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained,
86 for answer thereunto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, saith:

That he admits that William A. Carson, of the parish of Saint John's Berkley, State aforesaid, died in August, A. D. one thousand eight hundred and fifty-six, leaving of force his last will and testament, by which

he disposed of his property, real and personal, as set forth in complainant's said bill, and appointed this defendant and his codefendant, John F. Blacklock, executors and testamentary guardians of his children.

That both of said executors qualified under said will, and took upon themselves the execution of the same and the administration of the estate of said William A. Carson, deceased; and, towards the close of the year anno Domini one thousand eight hundred and fifty-six, and the beginning of anno Domini one thousand eight hundred and fifty-seven, the said executors, in pursuance of directions in said will contained, sold out the entire estate of the said William A. Carson, both real and personal; and, after having paid the debts of said testator, held the balance of the proceeds of said sales in trust for the purposes specified in said will. That the plantation, known as Dean Hall,
87 was sold to one Elias Nonus Ball, of Saint John's Berkley Parish, in said State, for fifty thousand dollars, ($50,000,) fifteen thousand dollars thereof being paid in cash, and the balance in bonds of the said Elias Nonus Ball, to wit, three bonds of $9 000 each, and two bonds of $4,000 each, secured by a mortgage of said plantation; that the larger portion of the negro slaves of said testator were also sold by said executors, at the same time to said Elias Nonus Ball for dollars in cash, the balance of the purchase-money upon said sale, consisting in the joint and several bonds of said Elias Nonus Ball and William J. Ball, to wit, three bonds of $11,000 each, all of which said bonds were secured by a mortgage of the negro slaves aforesaid; and that at the time above-mentioned other negro slaves and other personalty were sold to divers other persons.

That the amount of said sales, together with other claims collected, was some ($184,261) one hundred and eighty-four thousand two hundred and sixty-one dollars, out of which ($117,328) one hundred and seventeen thousand three hundred and twenty-eight dollars were applied to the payment of the debts of the said testator, and sixty-four thousand five hundred dollars ($64,500) divided into three parts, and
88 held by said executors for the several and respective legatees, according to the provisions of said will as stated in complainant's said bill, leaving a balance in the hands of the executors aforesaid of ($2,433,) two thousand four hundred and thirty-three dollars, as will appear by reference to their accounts as rendered before the ordinary of Charleston district, and hereunto annexed as an exhibit, and subsequently accounted for in the further administration of the said estate.

That the share of each legatee amounted to the sum of twenty-one thousand five hundred dollars, ($21,500,) and in each case said sum consisted of two bonds of the said Elias Nonus Ball, conditioned—the one for ($11,000) eleven thousand dollars and the other for (9,000) nine thousand dollars, and a third part of another bond of the said Ball for ($4,000,) four thousand dollars, and of one hundred and sixty-six $\frac{67}{100}$ dollars in cash.

That the bonds aforesaid of ($11,000) eleven thousand dollars each, amounting in all to ($33,000) thirty-three thousand dollars were the joint and several bonds of Elias Nonus Ball and William J. Ball, and was given for the credit portion of the negroes purchased by the said E. N. Ball, and were further secured by a mortgage of said negroe slaves, and the three bonds of ($9,000) each, and the bonds of ($4,000)
89 four thousand dollars, together with another bond of ($4,000) four thousand dollars were given by the said Elias N. Ball for the credit portion of "Dean Hall" plantation, and secured by a mortgage of same.

And this defendant further admits that, some time in anno Domini one thousand eight hundred and sixty-three, (1863,) he accepted payment of said bonds in the currency of the late Confederate States of America, and subsequently invested the same in eight per cent. bonds of said Confederate States; and, on the twenty-first day of July, anno Domini one thousand eight hundred and sixty-six, (1866,) he entered satisfaction on said mortgage of Dean Hall plantation.

And this defendant, further answering, says, in regard to the wines alluded to in said complainant's said bill, the same being in the nature of a specific legacy for William Carson and James P. Carson, and of a perishable character, the greater part was sold and the proceeds invested in the remaining bond of Elias N. Ball for ($4,000) four thousand dollars previously referred to; but a portion was reserved for the said William and James P. Carson in kind, and was sent, during the late war,
into the upper portion of the said State for safe-keeping, in charge
90 of James Petigru Carson, and this defendant believes and asserts
was by him used; and that, so far as the plate referred to in said bill was concerned, the same was deposited, shortly after the death of the said W. A. Carson, in a trunk which was never afterwards opened while it remained in the custody of this defendant, and was sent to the town of Columbia, where it was lost and destroyed upon the sack of that city by the troops of the United States under General Sherman.

And this defendant, further answering, says that he cannot admit the statement of said complainant in said bill contained that the said trustees have not paid to her any portion of the income to which she or her children were entitled under the will of said W. A. Carson, excepting certain small sums to James Petigru Carson, in the alleged illegal currency of the late confederacy; that, from the time of the sale of the plantation, negro slaves, and other personalty, as aforesaid, to Elias Nonus Ball, but little interest was paid upon his said bonds by said Ball, up to the time when this deponent accepted payment of the whole of said debts in the currency of the late Confederate States; and, during
the period which elapsed from the sales aforesaid, until the
91 blockade of the southern ports became so rigorous that remittances to the north became impracticable, this defendant did not fail to supply complainant with the means of living for herself and family; that complainant and her sons were, in consequence thereof, largely indebted to this defendant and his codefendant, John F. Blacklock, for advances made for their use as aforesaid, the larger portion, if not the whole of said advances being in money of a gold-value previous to the war aforesaid, which advances (the exact amount whereof cannot now be ascertained by reason of the destruction of the larger portion of this defendant's books and papers in Columbia, upon the burning of that place by the Federal troops under General Sherman) were all repaid to this defendant and his codefendant, John F. Blacklock, upon the acceptance by this defendant of payment of the bonds of said Elias Nonus Ball, in the currency of the said late Confederate States.

That this defendant, also, during the continuance of the late war, aforesaid, from time to time as his necessities required it, supplied the said James Petigru Carson, then serving in the armies of the said Confederate States as a soldier, although a minor and incapable of giv-
92 ing valid acquittances, with sums of money in Confederate currency, at that time the sole currency of this section of the country, taking from his individual receipt for the same and his pledge of honor

to approve and confirm said payments when he arrived at years of maturity.

And this defendant, further answering, says he cannot admit as in said bill of complaint alleged, that the complainant frequently called upon him to account to her for his administration of the estate of said William A. Carson, deceased; that, during the war aforesaid, he received no communication whatsoever from said complainant, either calling upon him for account or payment of income or otherwise; but that after the close of that struggle, he admits, that complainant did address him on the subject of the said trust estate; that in the communication last alluded to, said complainant alleged an absolute assignment to her from her two sons (the younger of whom had barely reached his majority) of all their right, title, and interest, in the estate of their late father, by which she became entitled in her own right to the whole of said estate, and exhibited, thro' her attorney, to this defendant a paper-writing of such purport, and, by virtue thereof, demanded from this defendant an immediate assignment to her of all the solvent securities still
93 remaining to said estate, giving this defendant notice at the same time, that he would be held responsible for losses which have occurred by reason of investments in bonds and other securities of the late Confederate States; that this defendant was advised by his counsel that he could not be legally required to settle the trust estate aforesaid, by piece-meal, but was entitled upon turning over the securities to the cestui que trust, to demand a release or receipt in full of all demands from them, and in case of refusal to comply on the part of said cestui que trust, to decline to transfer said securities as proposed by them and to apply to a court of equity of competent jurisdiction, in which his accounts might be examined and adjudicated upon, and from which he might receive a full and complete discharge from further responsibility, upon showing an honest and faithful administration of his said trust.

That, in pursuance of such views, on the twenty-sixth day of July, anno Domini one thousand eight hundred and sixty-six, (1866,) and previous to the filing of complainant's said bill, this defendant instituted proceedings in the court of equity for Charleston district, in the State of South Carolina, to which said complainant and her sons, James P. Carson and William Carson, as also his codefendant, John F.
94 Blacklock, were duly made parties; but complainant having filed said bill in this honorable court, in which the same questions are made, as in the bill in the State court aforesaid, as well as other questions affecting other and additional parties, this defendant discontinues the said suit in the court of the State of South Carolina, and appears and answers as aforesaid.

And this defendant says further that, at the time of the demand of said complainant upon this defendant for payment of income, as well as a transfer of principal, after the close of the war, that there was no interest whatsoever in his hands to meet her request, for none of the securities, in which that portion of the property of said estate which was saved consisted, was producing interest at that time, the interest, up to that period, on stocks of the city of Charleston having been funded, and the other securities paying no interest then nor since. That, subsequently to the commencement of proceedings in equity for a settlement of said estate, a small amount of income has been realized on the said stocks of the city of Charleston, to the amount of some hundred dollars or more.

And this defendant, further answering, admits that, in case the alleged assignment of James Petigru Carson and William Carson

95 of all their right, title, and interest to said complainant is recognized and approved by this honorable court, the said complainant is entitled to whatever remains of the estate aforesaid, but denies that she has any ground to hold him responsible for losses which may have occurred from investments in confederate securities; and says that he acted in the management and administration of the said trust-estate as a prudent man would have done, and as he himself did do, in reference to the management of his own affairs, and conformed in his actions with respect to said estate to those of the wisest and most far-seeing in the community in which he lived; that he acted, moreover, in strict compliance with the powers given to him in said will, and is protected in his said action by the authority thereby invested in him, to wit: "I authorize and empower my executors or qualified executor to vest and re-invest the purchase-money of my estate so as aforesaid to be held in trust by them in such public or private securities or stocks as they may deem best;" that, after the sale to the said Elias Nonus Ball, and his failure to pay interest altogether or paying only small parts thereof on his said purchase for several successive years, by which his said debt was annually increasing, with no increase of the security thereupon,

96 it seemed advisable to this defendant to take in payment of his obligations the currency of the Confederate States, a then de facto government which enjoyed the confidence of the entire South, and his opinions were approved and confirmed by the advice of the late honorable James L. Petigru, the father of complainant, who had been, throughout his business-life, the legal adviser and director of this defendant, and also the legal adviser and director of said complainant; that, furthermore, he was expressly authorized to invest in such securities by an act of the legislature of the State of South Carolina, which was passed in December, A. D. one thousand eight hundred and sixty-one, and cannot be held responsible for acting in obedience to the law of the State in which he lived, and which he had been always taught, was the rule prescribed by which, as a citizen of said State, it was his duty to square his conduct.

And this defendant craves reference to his accounts filed herewith as Exhibit A, which said accounts are as fully and accurately made as was practicable under the circumstances of the case, in view of the loss of papers and documents which took place during the war, and claims that he is entitled to a full discharge upon turning over the securities which may now be in his hands to said cestui que trust; and that

97 his refusal to transfer to said complainant, except under an order of a competent tribunal, or upon a full release, was in accordance with law, reason, and the rules of equity.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, true to the knowledge or belief of this defendant; all which matter and things this defendant is ready and willing to aver, maintain, and prove as this honorable court may direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) H. E. YOUNG,
Defendants' Solicitor.

Filed 8th May, 1867.

No. 24.—Replication of C. Carson, compl't.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina. In equity:

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON.

98 The replication of Caroline Carson, complainant, to the answers of Alexander Robertson, John F. Blacklock, William J. Ball, William McBurney.

This repliant, saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto saith, that she will aver and prove her said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that there is any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied to, confessed, or avoided, traversed, or denied is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct; and humbly prays as in and by her said bill she hath already prayed.

(Signed) MAGRATH & LOWNDES,
Complainant's Solicitors.

No. 25.—Proceedings of court on 12th & 18th May.

TUESDAY, 12 *May*, 1868.—The court was opened at 11 o'clock a. m., Hon. Geo. S. Bryan, dist. judge, presiding.

CAROLINE CARSON
vs.
99 ALEXANDER ROBERTSON, JOHN FREER Blacklock, Elias Nonus Ball, W'm McBurney, W'm Ball, W'm Carson, Jas. Petigru Carson. } Bill for account, injunction, and relief.

James Lowndes, compl't's solicitor; James Simons, Rutledge & Young, McCrady & Son & Campbell, for respondents.

This cause which was under consideration yesterday, was again heard.

MONDAY, *May 18th*, 1868.—The court was opened at 11 o'clock a. m., Hon. Geo. S. Bryan, dist. judge presiding.

The court had under consideration the bill filed by Caroline Carson vs. Alex. Robertson et al., and adjourned its further hearing after hearing E. McCrady and A. G. Magrath, and after adopting the following order:

No. 26.—Order of court refusing the motion to take bill off file.

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Bill in equity.

Magrath & Lowndes, compl't's sol'rs.

On hearing argument in support of the motion of the solicitors of W'm McBurney and William Ball, and of the solicitors of claimant against it,

it is ordered that the application in the said motion made to take the amended bill filed 14 Dec'r, 1866, from the file of this court be refused, and that the said bill and the answers of W'm McBurney, W. J.
100 Ball, Alexander Robertson, and J. F. Blacklock do stand as the bill and answers in the above cause.

(Signed) GEO. S. BRYAN,
U. S. Judge Dist. So. Ca.

18 MAY, 1868.
Filed 18th May, 1868.

No. 27.—Order for hearing demurrer of Ball & McBurney, and to take their answers off file.

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Order.

It is ordered that, as to the defendant William McBurney and W. J. Ball, the said cause stand for a hearing on the demurrer to the original bill filed the 11th December, 1866, and that they, the said William McBurney and William J. Ball may not be concluded by anything therein. It is further ordered that they have leave to take from the register's office the answers in the cause filed under protest on the 4th March, 1867, and that they shall not be considered parties to the bill filed by the complainant as a substitute for the original bill on the 14 Dec'r, 1866, nor required to plead, answer, or demur thereto, and that the complainant have leave to strike the names of the said William McBurney and William J. Ball out of the prayer of the said last-mentioned bill.

101 *No. 28.—Proceedings of court.*

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

Messrs Simons & Simons and McCrady & Son moved that the entry of this case on the docket be set aside as improvident and premature, and that the cause be struck from the docket . After full argument, the judge refused, and which order is filed as of this date with the proceedings. Dated Friday 5 June, 1868. Order refused on argument, this 5th of June, 1868.

No. 29.—Order to strike the cause from the docket as prematurely entered.

Before honorable Geo. S. Bryan, sitting alone in the circuit court.

It appearing by the introduction of the bill that the complainant, according to the 20th rule of the rules of practice of this court, requiring that the introductory part of the bill shall contain the names, place of abode, and citizenship of all the parties, plaintiffs and defendants, by and against whom the bill is brought, has brought her bill, amongst other defendants, against Elias Nonus Ball, alleged to be of the city of Charleston, and a citizen of South Carolina, and has prayed the process of this court to require the said Elias Nonus Ball to appear and answer the said bill according to the frame, 'cope, prayer, and
102 interrogatories thereof; and, it further appearing that the marshal of this court has returned the subpœna ad respondendum issued

out of this court "Non est inventus" as to the said Elias Nonus Ball, and the said Elias Nonus Ball hath not appeared nor answered, and altho' the said subpœna, as to the said Elias Nonus Ball, has not been executed and served upon the said defendant, the cause hath, notwithstanding, been entered on the docket as pending in the court. And it therefore appearing that the cause has been improvidently and prematurely entered on the said docket and is not yet at issue as to all the defendants to the said bill so brought by the complainant, on motion of Messrs. Simons & Simons, solicitors for the defendant William J. Ball, and of Messrs. McCrady & Son, solicitors for the defendant William McBurney, it is ordered that the said entry on the docket be set aside and the cause struck from the docket until the said subpœna shall have been returned as served and executed upon said defendant Elias Nonus Ball, or the cause shall be otherwise proper at issue.

No. 30.—Order to authorize the clerk to name commissioners.

WEDNESDAY, 10*th June*, 1868.—The court was opened at 11 o'clock a. m., hon. Geo. S. Bryan, dist. judge, presiding.

103 CAROLINE CARSON *vs.* ALEX. ROBERTSON ET AL. } In equity.

Upon motion of B. H. Rutledge and Henry E. Young, solicitors for Alexander Robertson and John F. Blacklock, defendants, respectively, it is ordered that Daniel Horlbeck, esq'r, clerk of said court, be, and hereby is, empowered to name commissioners for the purpose of taking testimony in above cause.

(Signed) GEO. S. BRYAN,
U. S. Judge, Dist. So. Ca.

We consent.
(Signed) MAGRATH & LOWNDES.
10TH JUNE, 1868.

No. 31.—Order appointing H. Y. Gray, commiss'r.

Upon motion of B. H. Rutledge & H. E. Young, solicitors for Alexander Robertson and John F. Blacklock, defendants, respectively, it is ordered that Henry Y. Gray, esquire, be, and is hereby, appointed an examiner to take such oral testimony as may be adduced in said cause.

(Signed) GEO. S. BRYAN,
U. S. Judge, Dist. So. Ca.

JUNE 10TH, 1868.
We consent.
(Signed) MAGRATH & LOWNDES, *Sol'rs.*

Mr. McCrady addressed the court until the hour of adjournment.

104 *No. 32.—Order appointing D. Horlbeck, commissioner, to take testimony.*

TUESDAY, 23 *June*, 1868.—The court was opened at 11 o'clock a. m., Hon. Geo. S. Bryan, dist. judge, presiding.

On motion of Magrath & Lowndes, complainant's solicitors, it is ordered that the order of the court in this case, made on 10th June,

A. D. 1868, be so amended as to appoint Daniel Horlbeck, esq'r, examiner in place of Henry Y. Gray, and that he be authorized to take all such testimony, oral and documentary, as may be adduced in the case.

(Signed) GEO. S. BRYAN,
U. S. Judge, Dist. So. Ca.

23 JUNE, 1868.

No. 33.—Proceedings of court of 3d & 4th of June.

THURSDAY, 3 *June*, 1869.—The court was opened at 11 o'clock a. m. Hon. Salmon P. Chase, Chief Justice; Hon. Geo. S. Bryan, district judge, presiding.

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Bill for relief, injunction, &c.

Magrath & Lowndes, for compl'ts; McCrady & Simons, for def'd'ts. Case was heard and its further consideration continued till to-morrow.

105 FRIDAY, 4 *June*, 1869—The court was opened at 11 o'clock a. m. Hon. Salmon P. Chase, Chief Justice; Hon. Geo. S. Bryan, dist. judge, presiding.

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Bill for relief.

Messrs. Magrath and McCrady were heard, and opinion reserved; also Mr. James Simons.

No. 34.—Demurrer overruled.

United States circuit court for So. Ca. In equity.

SATURDAY, *5th June*, 1869.—The court was opened at 10 o'clock a. m., Hon. S. P. Chase, C. J., presiding; and Hon. Geo. S. Bryan, dist. judge.

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Bill for relief, &c.

The cause was heard some days since, and on this day the court (through Chief Justice) overruled the demurrer, and granted leave to plead or answer.

106 *No. 35.—Report of testimony taken by D. Horlbeck.*

CAROLINE CARSON
vs.
ALEX. ROBERTSON, JNO. FREER BLACKLOCK, Elias Nonus Ball, W'm McBurney, W'm Ball, W'm Carson, Ja's Petigru Carson. } Bill in equity for account, injunction, & relief.

Magrath & Lowndes, compl't's sol'rs; Rutledge & Young, sol'rs for Robertson & Blacklock; Simons & Simons, for W'm Ball; McCrady & Son, for W'm McBurney.

29 JUNE, 1869.

Testimony taken by Dan'l Horlbeck, clerk, under special order of court.

Proof adduced that each attorney had notice to appear on this day at 1 o'clock.

Mr. Lowndes & Mr. E. McCrady present.

Mr. McCrady objected to the examination being taken in the absence of Mr. Simons, who, he says he believes, is engaged in the U. S. court.

By consent, the examination is to take place on Saturday next, at 11 o'clock, at the Federal court-house.

(Signed) DAN'L HORLBECK, *Clerk.*

3D JULY, 1869.

Present, Messrs. Lowndes, McCrady, & Rutledge.

W'M MCBURNEY sworn:

Direct examination by Mr. Lowndes:

1. The payment to E. N. Ball, referred to in my answer, was
107 made in checks of Hyatt, McBurney & Co. on Bank of So. Ca.

2. At the time of those checks the deposit in Bank of So. Ca. of Hyatt, McBurney & Co. was in a small portion of confederate notes, and much the larger amount was made by checks of other parties in banks, which were put to credit of Hyatt, McBurney & Co.

3. Witness does not know against what funds these deposited checks were drawn, that is, checks which went to order of Hyatt, McBurney & Co. Hyatt, McBurney & Co. had no credit at that time in coin in Bank of So. Ca., nor in U. S. Treasury notes.

5. The checks given to E. N. Ball by Hyatt, McBurney & Co. were deposited to the credit of Robertson & Blacklock in the Bank of So. Ca., and charged to Hyatt, McBurney & Co. The witness qualifies statement, and confirms his answer as to one of the checks and not the others.

6. As to the checks amounting to $16,000 in the gross, I don't know what deposit the said E. N. Ball made of them. They went to the liquidation of liens and judgments against E. N. Ball.

7. Witness does not know how the credit in Hyatt, McBurney & Co.'s bank-book was made, but thinks the practice of the bank was to enter credit for checks when checks were deposited, and currency when currency was deposited.

8. I suppose that if the checks were paid at the teller's stand
108 they would have been paid in confederate currency, as there was no other currency at the time in existence here.

9. When the checks were paid they were simply charged against drawers, without reference to the manner in which they were paid. Long after that date the banks did make a difference. I think it was not till '64. They then made specific contracts; i. e., books were so headed that it appeared the transaction was in confederate currency.

10. I know from the books of the Bank of So. Ca. that Robertson & Blacklock deposited the checks of 84,207.56 to their credit in Bank of So. Ca. From same source of information I know that Robertson & Blacklock were charged by the bank with a check drawn to the amount of $84,000 against the deposit. This was on 24 April, 1863.

11. The checks referred to were drawn by Hyatt, McBurney & Co., simply for so much money. It was the understanding at all the banks that payments were to be made in confederate curreney, as there was no other currency at the time. There was no specific mode of payment

agreed upon in payment of checks. The checks were simply drawn for so much money.

12. In that part of my answer to the bill wherein I say that the currency in which the purchase and payment were made by the said Hyatt, McBurney & Co., was that which was universally in use throughout the community as money, I mean, by the word currency, confederate treasury notes.

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13. The checks were charged against Hyatt, McBurney & Co., without any specification as to whether pay was made in confederate treasury notes or in any other money.

14. There was no distinction until '64 as to how deposits or payments were made.

Cross-examined by Mr. Edward McCrady:

15. Was there anything unusual, or out of the way of business, as it was done at that time, in paying the purchase-money for "Dean Hall"? Ans. Nothing at all.

Re-direct examination by Mr. Lowndes:

16. The contract with Mr. Ball was cash, but that cash was understood to be the money which was used in every day's transations.

A. S. JOHNSTON, sworn.

Direct-examination by Mr. Lowndes:

1. I am acting president of Bank of South Carolina, and have been a director for 16 or 17 years. In '63, and the latter part of '62 the only currency used by the banks was confederate treasury notes.

3. I have record of a check drawn on 23 April, '63, by Hyatt, McBurney & Co. for $84,207.56, which was charged as No. 798 against the account of said firm.

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4. The check was paid by a credit to Robertson, Blacklock & Co., on same day. The understanding of the bank was that the transaction was in the currency of the day, which was confederate currency.

5. The credit of Hyatt, McBurney & Co., on that day, exceeded the amount of the check. I don't know what the credit was for, but the transactions before the war were regarded as transactions after the war.

6. The payments made by the bank in April, 1863, were all in confederate treasury notes, as there were no other notes in circulation.

7. It was understood when the credit was given in April, '63, and some time previous, that the credit was in currency of the day, viz., confederate treasury notes.

8. The entry of credit for check and currency in Hyatt, McBurney & Co.'s bank-book, &c., was payable in the currency of the day.

Cross-examination by Mr. McCrady:

1. In that bank (Bank of So. Ca.) the transition from the old way of doing business to the new, up to April, '63, was not particularly noticed in books, and was not particularly specified until '64.

(Signed) A. S. JOHNSTON.

Sworn to before me this 3d July, 1869.

(Signed) DAN'L HORLBECK,
C. C. C. U. S. for So. C'a.

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To the hon. the judge of the circuit court of the U. S. for So. Ca.:

I have the report that the eight pages of paper preceding, contains

an accurate statement of the testimony of Messrs. McBurney & Johnston, taken by me, under order of court of 23d June, 1868.

(Signed) DAN'L HORLBECK,
C. C. C. U. S. for So. Ca.

CHARLESTON, *July 10th*, 1869.

DAN'L HORLBECK, Esq.,
C. U. S. D. Court.

DEAR SIR: The package containing copies of the testimony of Mr. A. S. Johnston and myself, in the case of Caroline Carson vs. Robertson & Blacklock et al., was duly received. Mr. McCrady handed me the copy sent to him. In comparing it with the other, I found some verbal inaccuracies and omissions, and Mr. McCrady said he would appoint a time to meet you and have the copies compared with your original notes, and signed. Awaiting his appointment of time, I am, resp'y, yours.

(Signed) W'M McBURNEY.

Mr. Johnston will attend also at the time appointed.

112 U. S. AMERICA,
Dist. of So. Ca.:

Before D. Horlbeck, clerk, as referee, to take testimony in case in circuit court for So. Ca.

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Bill in equity.

Magrath & Lowndes, Rutledge & Young, for respond'ts.

W'M WHALEY, brought forward on part of defendants.

Examination in-chief:

1. I know of the sale by executors of Carson to Hyatt, McBurney & Co., of Dean Hall.

(Mr. Lowndes here reserved all right of objection to all this testimony on the ground that the references in this case have been closed.)

2. I negotiated the matter for the parties on both sides, more especially representing Mr. McBurney.

3. I carried my negroes to Dean Hall, in 1861, and engaged in planting with Elias Ball, then the proprietor. After planting for some time, became dissatisfied with Mr. Ball, and, to get rid of him, pursuaded Mr. McBurney to buy him out, and I conducted the negotiation. To perfect the title the executors of Carson had to satisfy the mortgages on the property. Pending the matter I was attending a meeting of the commission on Mr. Petigru's code, as one of the committee to ex-
113 amine the same, in the spring of 1863. This was a' Mr. King's, and Mr. Petigru seated there at the time. Mr. Petigru was aware of the negotiations for the purchase and sale. He came into the room where the committee was in session, and insisted that I should leave the committee and go up to Dean Hall and conclude this matter, as he said Ball paid nobody, and he could get no money for the boarding and schooling of Jimmy Carson, the child of Mrs. Carson, and his grandchild. Mr. Petigru expressed great anxiety to have the matter wound up, to wit, the purchase and sale.

(Mr. Lowndes for complainant objected to the testimony of Mr. Petigru on the ground of its irrelevancy.)

I went to Dean Hall and completed the bargain with Ball. McBurney was to pay one hundred thousand dollars for the plantation in cash. The money was paid and the mortgages satisfied.

By Mr. Rutledge:

4. Do you know or not whether Mr. Petigru was the agent in fact of Mrs. Carson?

I do not, but he acted throughout as one in authority, and I so believed him and acted on his direction. Mrs. Carson at the time of these transactions was at the North, her son James Carson was here and a boy. Mr. Petigru, I would say, was "in loco parentis." He spoke of his boarding, schooling, &c. Mr. Lesesne was his uncle.

114 Cross-examined by Mr. Lowndes:

1. I was not the agent of Mrs. Carson, nor was I the agent of either of the sons, but considered myself as representing Mr. Petigru, the grand-father. Mr. Petigru was sick at the time. Mr. Petigru never told me he was the agent of Mrs. Carson or her children.

2. I first suggested to Mr. McBurney to purchase Dean Hall; and then went and asked Ball if he would sell. I do not think Mr. McBurney cared much about the matter, and was concerned in this matter to oblige me.

3. I do not know who was the guardian of James Carson.

4. My opinion was, that the payment was to be in confederate treasury notes.

(Signed) WILLIAM WHALEY.

To the hon. the judges of the circuit court of the United States for S. Ca.

I have the honor to report that the seven preceding pages of paper contain the testimony of W'm Whaley, taken by me under order of court of 23 June, 1868.

(Signed) DAN'L HORLBECK,
C. C. C. U. S. for S. Ca.

Filed 3 Feb'y, 1871.

115 *No. 36.—Decree on merits of the case.*

In the circuit court of the United States, district of South Carolina.
In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

On hearing the pleadings and the argument of counsel in this cause, it is adjudged and decreed that the surrender by the defendant, Alexander Robertson of the bonds of Elias N. Ball, and the satisfaction of the mortgage of Dean Hall to secure the said bonds held by him as trustee under the will of William A. Carson for confederate treasury notes, were done in breach of his duty as trustee, and are null and void, and that the obligors of the said bonds are not discharged from the payment thereof; and that the mortgage of Dean Hall plantation by Elias N. Ball to secure certain of the said bonds is a valid and subsisting mortgage on the said plantation in the hands of the purchaser thereof; and that the com-

plainant is entitled to the said bonds, and to enforce the mortgage as security for the same.

It is further ordered and decreed that the said bonds be set up as valid debts, and the said mortgage be set up as a valid mortgage, and the defendants, William McBurney and William J. Ball do surrender, on or before the first day of July, A. D. 1872, to the clerk of this
116 court, any of the said bonds of Elias N. Ball in their possession, respectively; and that the defendant William McBurney do surrender to the said clerk the mortgage of Dean Hall made by Elias N. Ball to Alexander Robertson and John F. Blacklock, executors, and referred to in the pleadings.

It is further ordered and decreed that the clerk of this court do cancel the satisfaction of the said bonds and mortgage on the records thereof made; and that the said Alexander Robertson, by his assignment thereof, transfer to the complainant the right to collect the said bonds, or, in case of default, to foreclose the mortgage of Dean Hall given to secure the same.

It is further ordered, adjudged, and decreed that the sum of thirty-one thousand dollars ($31,000) is due as principal on the said bonds of Elias N. Ball to Alexander Robertson and John F. Blacklock, payment whereof is secured by the mortgage of the said Dean Hall plantation, together with interest thereon, payable annually, from the 23d day of April, A. D. 1863; and that the sum of thirty-three thousand ($33,000) dollars is due on the bonds of Elias N. Ball and William J. Ball, together with interest, payable annually, from the 23 April, A. D. 1863, and that the said sums and interest are payable to the complainant.

117 It is further ordered and decreed that the said sum of thirty-one thousand dollars and the interest due thereon are a lien and charge on Dean Hall plantation, and that if the same be not paid, on or before the first day of August, A. D. 1872, the equity of redemption of all the parties to this suit and of Hyatt, McBurney & Co. in the said Dean Hall plantation be forever barred and foreclosed; and that the marshal of this court do sell the said plantation at public auction, in the city of Charleston, after due notice, on the following terms, viz., one fourth cash, and the balance in one, two, and three years, the credit portion to be secured by the bond of the purchaser, bearing interest, payable annually, and a mortgage of the property sold; and that he do first apply the cash proceeds of sale and assign so much as may be necessary of the said securities in satisfaction of complainant's claim, and that if any of the said securities remain, he assign them to the defendant William McBurney, in such manner that the interest of the complainant shall have priority.

It is further ordered and decreed that if the complainant become the purchaser of Dean Hall, at the said sale, the marshal do allow her to set off her claim herein established as a lien on Dean Hall, or so much as shall be necessary against her bid.

118 It is further ordered and decreed that the defendant William J. Ball do pay to the complainant, on or before the first day of August, A. D. 1872, the amount of principal and interest due on the joint and several bonds of himself and Elias N. Ball, and that, on his failure to do so, process issue against him to enforce such payment.

It is further ordered and decreed, that the defendant Alexander Robertson account before the clerk of this court, on or before the first day of August, 1872, as executor and trustee, under the will of William A. Carson, and that the said clerk report, on or before the 15th day of Au-

gust, A. D. 1872, the amount due by the said Alexander Robertson to the complainant, as legatee, under the said will, and as assignee of the rights of her sons under the said will; and that, on the coming in of the said report and the order of the court thereon, the said Alexander Robertson do pay the amount reported to be due, as the same may be then ordered.

It is further ordered and decreed that the defendants Alexander Robertson, William McBurney, and William J. Ball, do pay the costs heretofore accrued in this cause, in the propartion to be fixed by the clerk; and that the complainant have leave to apply for further orders at the foot of this decree.

(Signed) HUGH L. BOND,
Judge, &c.

MAY 2D, 1872.

119 *No. 37.—Claim and allowance of appeal.*

The circuit court of the United States, fourth circuit, district of South Carolina. In equity.

CAROLINE CARSON *vs.* ALEXANDER ROBINSON, JOHN FREER BLACKLOCK, William McBurney, Elias N. Ball, William J. Ball, William Carson, and James P. Carson.	Bill for account, injunction, and relief.

Claim and allowance of appeal from decree thereon.

And now, Alexander Robinson, John Freer Blacklock, William McBurney, and William J. Ball, of the above-named defendants, after a final decree entered in this cause, come and show to the court that the matter in dispute exceeds the sum of two thousand dollars; (that the defendants, Elias N. Ball, William Carson, and James P. Carson, though named in the subpœna to the bill of complaint, have not been served, appeared, or answered thereto, and that the said Elias N. Ball has lately deceased, and that his representatives have not been made party thereto,) and thereupon claim an appeal from the said final decree to the Supreme Court of the United States next to be holden
120 at Washington on the first Monday in December next, and the same is accordingly allowed, and the appellant is ordered to serve the usual citation according to law.

RUTLEDGE & YOUNG,
Sol'rs for Robinson & Blacklock.
McGRADY AND SON,
Sol'rs for William McBurney.
SIMONS & SIMONS,
Sol'rs for W. J. Ball.

Allowed.
(Signed) GEO. S. BRYAN,
U. S. Judge, Dist. of So. Ca.

14 MAY, 1872.

No. 38.—Appeal-bond of W'm McBurney.

The circuit court of the United States, fifth circuit, district of South Carolina. In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBINSON, JOHN FREER BLACKlock, William McBurney, Elias N. Ball, William J. Ball, William Carson, and James P. Carson.
} Appeal-bond.

Know all men by these presents that we, William McBurney and John S. Fairly, are held and firmly bound unto Caroline Carson, in the full and just sum of three thousand dollars, to be paid to the said
121 Caroline Carson, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this fourteenth day of May, in the year of our Lord one thousand eight hundred & seventy-two.

Whereas, lately, at a circuit court of the United States, fifth circuit, district of South Carolina, holden at Charleston, in a suit depending in said court between Caroline Carson, complainant, and Alexander Robertson, John Freer Blacklock, William McBurney, Elias N. Ball, William J. Ball, William Carson, and James P. Carson, a decree was rendered against the said Alexander Robertson, John Freer Blacklock, William McBurney, and William J. Ball, and the said Alexander Robertson, John Freer Blacklock, William McBurney, and William J. Ball, having obtained an allowance of appeal, and filed a copy thereof in the clerk's office of the said court, to reverse the decree in the aforesaid suit, and a citation directed to the said Caroline Carson, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next:

Now, the condition of the above obligation is such, that if the said William McBurney shall prosecute the said appeal to effect, and
122 answer all damages and costs if he, the said William McBurney, fail to make his said plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) W'M McBURNEY.
JNO. S. FAIRLY.

Sealed & delivered in presence of—
DAN'L HORLBECK,
C. C. C. U. S. for So. Ca.

Approved by Geo. S. Bryan, U. S. judge, dist. of So. Ca., 14 May, 1872.

Circuit court of the United States, district of South Carolina, fourth circuit. In equity.

No. 39.—Citation.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON, JOHN FREER BLACKlock, William McBurney, Elias N. Ball, William J. Ball, William Carson, and James P. Carson.
} Bill for account, injunction & relief. Citation to appeal upon decree thereon.

To CAROLINE CARSON, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington
123 on the first Monday in December next, pursuant to a claim and allowance of appeal filed in the circuit court of the United States for the district of South Carolina, wherein Alexander Robertson, John Freer Blacklock, William McBurney, and William J. Ball (the said Elias N. Ball, William Carson, and James P. Carson, named in the subpœna to the bill not having been served, nor having appeared or answered thereto, and the said Elias N. Ball having since deceased, and his representatives not having been made parties thereto,) to shew cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and speedy justice in that behalf.

Witness the honorable George S. Bryan, one of the judges of the circuit court of the United States for the district of South Carolina, the 14th day of May, in the year of our Lord eighteen hundred and seventy-two.

(Signed) GEO. S. BRYAN,
U. S. Judge, Dist. of So. Ca.

14 MAY, 1872.

We acknowledge service of a copy of this paper, May 14th, 1872.
(Signed) MAGRATH & LOWNDES,
Solicitors of Caroline Carson.

124 United States circuit court for South Carolina.

I, Daniel Horlbeck, clerk of the circuit court of the United States for South Carolina, do hereby certify that the accompanying thirty-seven pages of writing are a full and true copy of the supplemental record and proceedings in the said circuit court, in the cause of Caroline Carson, (complainant,) appellee, and Alexander Robertson et al., (respondents,) appellants, now on appeal from the circuit court to the Supreme Court of the United States.

In witness whereof I have hereunto set my hand and affixed the seal of the said circuit court at Charleston this thirty-first day of July, anno Domini eighteen hundred & seventy-two.

[SEAL.] DAN. HORLBECK,
C. C. C. U. S. for S. C.

125 *Supplemental transcript of record and proceedings of the circuit court of U. S. for South Carolina district, fourth circuit, in equity, on an appeal from decree of said court, for complainant.*

UNITED STATES OF AMERICA,
District of South Carolina:

Circuit court, fourth circuit.

Alexander Robertson, John Freer Blacklock, William McBurney, Elias N. Ball, William J. Ball, William Carson, James P. Carson.

McCrady & Son, sol's for W'm McBurney; Simons & Simons, sol'rs for W'm J. Ball; B. H. Rutledge, esq., sol'r for Jno. F. Blacklock; H. E. Young, esq, sol'r for Alex'r Robertson.

126 *No. 1.—Affidavit of Ja's Lowndes.*

In the circuit court. In equity.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

Personally appeared before me James Lowndes, who, being duly sworn, deposes that, as counsel for the complainant, he put in evidence in this cause a certified copy of the mortgage of Dean Hall, by Elias N. Ball to Alexander Robertson and John F. Blacklock, executors, dated 2nd March, 1857.

(Signed) JAMES LOWNDES.

EDWARD MCCRADY, JUN'R.,
Notary Public.

No. 2.—Order of court to replace copy mortgage of E. N. Ball to ex'ors of Carson.

In the circuit court. In equity.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

127 On hearing the affidavit filed in this matter, and on motion of Magrath & Lowndes, complainant's solicitors, it is ordered that complainant have leave to replace on the file of the court, as a part of the record in this cause a copy of the mortgage of Elias N. Ball, to Alexander Robertson, and John F. Blacklock, executors of Dean Hall plantation, and that the same stand on the file of the court as part of the original record of the cause.

(Signed) GEO. S. BRYAN,
U. S. Judge, Dist. S. C.

Filed 31 July, 1872.

No. 3.—Mortgage of Dean Hall.

To all whom these presents may concern I, Elias N. Ball of Charleston, in the State aforesaid, send greeting:

Whereas I, the said Elias N. Ball, in and by five certain bonds or obligations, bearing date the , stand firmly held and bound unto Alexander Robertson and John F. Blacklock, executors of the last will and testament of William A. Carson, deceased, in the penal sum of seventy thousand dollars, viz, by three of said bonds in the penal sum of eighteen thousand dollars each, and by the other
128 two in the penal sum of eight thousand dollars each, conditioned for the payment of the full and just sum of thirty-five thou-

sand dollars, viz: Three of said bonds conditioned for the payment of nine thousand dollars each, and the other two conditioned for the payment of four thousand dollars each, in five equal instalments, the first instalment on the 14th day of January, eighteen hundred and fifty-eight, and the remaining four instalments annually thereafter, with legal interest from the 14th day of January, eighteen hundred and fifty-seven, payable annually on the whole, or such part of the principal as shall from time to time remain unpaid, as in and by the said bonds and condition thereof, reference being thereunto had, will more fully appear:

Now, know all men, that I, the said Elias N. Ball, in consideration of the said debt and sum of money aforesaid, and for the better securing the payment thereof to the said Alexander Robertson and John F. Blacklock, executors aforesaid, according to the condition of the said bond, and also in consideration of the further sum of three dollars to me, the said Elias N. Ball, in hand well and truly paid by the said Alexander Robertson and John F. Blacklock, executors aforesaid, at and before the sealing and delivery of these presents, the receipt where-
129 of is hereby acknowledged, the said , have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release unto the said Alexander Robertson and John F. Blacklock, executors aforesaid, all that plantation or tract of land known as Dean Hall, situate, lying, and being on Cooper River, St. John's Parish, Berkley, in the district of Charleston and State aforesaid, 'butting and bounding to the east of Cooper River, to the northwest on lands formerly of William Harleston, now of John Harleston and Dr. William Moultrie; to the west on White Hall plantation, hereinafter mentioned; to the southwest on Back River, and to the south on lands formerly of Isaac E. Holmes, now of , having such forms, dimensions, and descriptive marks as are represented on a plat thereof, made by Henry Ravenel, surveyor, in March, 1827, and containing twenty-six hundred acres, be the same more or less. Also, all that tract of land situate in the same parish aforesaid, known as White Hall, 'butting and bounding to the east on Dean Hall plantation aforesaid; to the northeast on lands of John Harleston and Dr. William Moultrie; to the northwest on lands formerly of Hugh Swinton Ball, esquire, deceased, now of , and to the southwest on lands formerly of John C. Ball, and lately of William Ball, esquire, deceased, having such form, dimensions, and descriptive marks as are represented on a plat
130 made by R. J. Pinckney, surveyor, in April, 1837, and containing five hundred and twenty-six $\frac{23}{100}$ acres, be the same more or less.

Also, all that parcel of land in the same parish aforesaid, containing thirty-five $\frac{20}{100}$ acres, bounding to the north and east on Chicken Creek; to the south and west on Medway or Back River, as the same was granted to the said William A. Carson by the State of South Carolina, by a grant bearing date the fourth day of September, eighteen hundred and forty-three; together with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging, or in any wise incident or appertaining: To have and to hold all and singular the said premises unto the said Alexander Robertson and John F. Blacklock, executors aforesaid, their heirs and assigns forever. And I, the said Elias N. Ball, do hereby bind myself, my heirs, executors, and administrators to warrant and forever defend all and singular the said premises unto the said Alexander Robertson and John F. Blacklock, executors aforesaid, their heirs and assigns, from and against me and my heirs, executors, administrators, and all other persons lawfully claiming or to claim the same or any part thereof; provided always, nevertheless, and it is the true

intent and meaning of the parties to these presents that if I, the said Elias N. Ball, do, and shall well and truly pay or cause to be paid,
131 unto the said Alexander Robertson and John F. Blacklock, executors aforesaid, the debt or sum of money aforesaid, with the interest thereon, if any shall be due, according to the true intent and meaning of the said bond and condition thereunto written, then this deed of bargain and sale shall cease, determine, and be utterly null and void; otherwise it shall remain in full force and virtue. And it is agreed by and between the said parties, that the said Elias N. Ball is to hold and enjoy the said premises until default of payment shall be made.

Witness my hand and seal this second day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and in the eighty-first year of the Sovereignty and Independence of the United States of America.

(Signed) ELIAS N. BALL.

Signed, sealed, and delivered in presence of—
(Signed) EDWARD N. THURSTON.
" HENRY L. BURNS.

No. 4.—Satisfaction of mortgage.

(Endorsed:) The bonds that this mortgage was given to secure having been paid, I declare the same fully satisfied.

(Signed) ALEX. ROBERTSON, *Ex'or.*

Witness—
(Signed) HENRY TRESCOTT,
Register M. C.

JULY 21, 1866.

132 (Endorsed:)

MESNE CONVEYANCE OFFICE, CHARLESTON COUNTY.

The within deed and satisfaction endorsed thereon is a true and correct copy of a deed recorded in book V, No. 13, page 496, on the 11th day of March, 1857.

(Signed) HENRY TRESCOTT,
Register M. C.

No. 5.—Affidavit of H. E. Young as to lost copy of accounts.

THE STATE OF SOUTH CAROLINA,
Charleston County:

Circuit court U. S., So. Ca. dist. In equity.

IN RE CAROLINE CARSON }
vs. }
ALEXANDER ROBERTSON. }

Personally before me made oath, Henry E. Young, of the firm of Rutledge & Young, that while he cannot speak with perfect assurance of events past so long ago, yet he feels confident that the accounts referred to in the answer of the defendant Alexander Robertson, as Exhibit A, were filed in said circuit court at the same time said answer was filed.

That he is confirmed in this recollection of the matter by the memory of his partner, B. H. Rutledge, by the practice of his office; and,
133 furthermore, that there are now in his office the copy of said accounts, which were filed in the State court, & which were obtained there in order to have copies made for the said answer of said defendant in the said cause in said circuit court of the United States. Till the doubt was suggested of these accounts having been filed, deponent was perfectly confident that they had been, and such, also, was the confidence of B. H. Rutledge.

(Signed) H. E. YOUNG.

Sworn to before me this 17th July, 1872.

JENNINGS W. PERRY, *Not. Pub.*

No. 6.—Affidavit of Ja's Lowndes as to lost copy of accounts.

THE UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit. In Equity:

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

Personally appeared before me James Lowndes, one of the solicitors in the cause, who, being duly sworn, deposed that in the argument of this cause he distinctly referred to the accounts filed as Appendix "A," of Mr. Robertson's answer, as a part of the record in the cause,
134 and as evidence for the complainant; that he moreover gave to the counsel of Mr. McBurney copies of his (deponent's) printed argument in the cause; that, on page 7 of that argument, distinct reference is made to the account in question as being on file, although they are there said to be on file with the bill, which is plainly a mistake of expression; that neither at the hearing or at any time thereafter was any objection made to the reference to the accounts as evidence by any party to the suit, and deponent always supposed and believed that the said accounts were part of the record.

(Signed) JAMES LOWNDES.

Sworn to 17 July, 1872.

M. E. HUTCHINSON, *Not. Pub.*

No. 7.—Order to substitute copy of accounts.

In the circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

The affidavits of Henry E. Young & of James Lowndes in regard to the accounts of the defendant Alex. Robertson, mentioned
135 in his answer as Exhibit A, having been read, it is, on motion of H. E. Young, sol'r for Alex. Robertson, defendant, ordered that

he have leave to substitute other copies of the accounts of said defendant for those believed to have been originally filed therewith as Exhibit "A," and lost or misplaced; and that the same do stand on the file of the court as a part of the original record of the cause.

(Signed) GEO. S. BRYAN,
U. S. Judge, D. S. Ca.

Filed 31 July, 1872.

136 *No. 8.—Account of A. Robertson & J. F. Blacklock, executors.*

Estate of William A. Carson in account with Alexander Robertson & J. F. Blacklock, executors.

DEBITS.

1856.				
Aug.	17.	To paid Robertson & Blacklock & Co., attested ⅜ for balance due them by testator, per their ⅜-book rendered herewith ..		25,106 04
Sep.	2.	" St. Michael's Church bill, 11.00; 4. Mrs. Carson, for self & family, 50		61 00
	15.	" paid F. Windham for 108 cords wood for Dean Hall Mills....		378 00
	27.	" Mrs. Carson, self & family, 50; Box & Posi, bill tuition W'm & J. P. C., 54.87		104 87
Oct.	2.	" 6 mos. ass't on pew St. Michael's Church, due 1st inst.....		14 60
"	20.	" Mrs. C. Carson, for self & family.....		50 00
	30.	" F. Windham, for 108 cords wood for Dean Hall Mills.....		378 00
	"	" Miss E. S. Smith, 1 y'r's int. on testator's bond for $3,500....		245 00
	31.	" Bee & Tylee, for sundry articles, wire, &c., for mills.....		412 23
Nov.	3.	" road tax for Sullivan' Island, 6.00; Geo. Buist, ordinary, 16..		22 00
	19.	" John May's ⅜, 55.00; 26. Lockwood & Johnson, repairing mill, 177.59		232 59
	29.	" Mrs. Carson, self & family.....		200 00
Dec.	3.	" 1 mo's insurance on Dean Hall Mill, 10,500, *a* 1½ p'r ct.....		157 50
	10.	" F. Windham, for 126 cords, light wood for same.....		441 00
	19.	" H. Bischoff, provisions boat hands, 17.46; Jan. 9, 1857, Lachicotte, miller, 100.....		117 46
1857.				
Jan.	14.	" Jno. D. Murray, overseer, 100; 15. Tom Bell, for rice-barrels, 51.25.....		151 25
	15.	" R. Townsend, rice-barrels, 60.00; Box & Posi, tuition of W'm & J. P. C., 52.12.....		112 12
	17.	" assessment for widening street on Sullivan's Island.....		25 00
	"	" Dr. T. L. Ogier, medical ⅜.....		356 00
	20.	" Robertson, B & Co., attested ⅜ for bal. sch'r A. S. Conklin's ⅜		5,273 78
137				
Jan.	30.	To S. N. & J. N. Hart's, attes. ⅜, 68.75; Feb. 2, P. Lachicotte, in full, as miller, 100.00.....		168 75
	4.	" Plenty & Benbow, rice-barrels, 20.00; B. H. Read, for bbls. & staves, 230.83.....		250 83
	11.	" testator's note in B'k State S. C., dated 3 June last, with int...		409 00
	"	" " " " " 28 May " " " ...		2,050 50
	"	" " " " " 9 June " " " ...		2,050 50
	16.	" Mrs. M. R. Roper, in full, prin. & int., testator's bond to her...		3,359 30
	"	" John D. Murray, " of wages as overseer, & all demands..		900 00
	18.	" De Saussure & Son, att'ys Eliza Rutlege, in full, prin. & int., test. bond.....		1,911 98
	"	" De Saussure & Son, att'ys Eliza Rutlege, in full, prin & int., test. bond.....		3,409 48
		Amount forward.....		48,348 18
1857.				
Feb.	18.	" paid H. A. DeSaussure, ex'or M. S. Boone, ex'ix, in full, prin. & int., test. bond.....		2,237 45
	"	paid H. A. De Saussure, ex'or M. S. Boone, ex'ix, in full, prin. & int., test. bond.....		459 44
	"	paid H. A. De Saussure, in full, prin. & int., test. bond to him...		2,160 64
	"	" W'm Birnie, ex'or Jno. Black, in full, prin. & int., test. bond.....		15,985 83

	19.	" paid J. K. Robinson, in full, prin. & int., test. bond, to J. W. Gray, master in equity	4,218 78
	20.	" paid Otis Kelton's bill, 10.75; 21. Mrs. M. H. Pyatt, in full, prin. & int. of testator's bond assigned her	10 75
	21.	" paid Miss Mary Crisp, in full, prin. & int. of testator's bond assigned her	10,362 46
	23.	" " Stebbens & Miller, in full, "test. note" & protest	3,145 27
		" " Miss E. S. Smith, " " "bond" " "	350 00
	25.	" " H. Gourdin, ex'or Dr. Elias Ball, bond " "	3,596 64
M'ch	4.	" " Mount Pleasant Ferry Co.'s attest. ⅜, $19.47 & 26.89	3,702 20
		" " testator's subscription to Farmer & Planter	46 36
	11.	" " Pieere C. Kane & Edith Kane, in full of her legacy under the will of the late Mrs. Elizabeth Carson	4 20
	12.	" paid Ravenel & Co., in full, test. bond due 1 Jan'y, 1856, $1,912.50, & int. to date, $159.54	2,000 00
			2,072 04
138			
M'ch	12.	To paid T. W. Easterling, gen. tax, 1856, & direct tax, 1857, for St. John's Berkley	215 96
	17.	" paid J. Gadsden for rice-barrels	58 63
	26.	" " Lockwood & J., attested ⅜s, $783.33, 74.74, & 13.83	822 40
	28.	" " W'm Calder, attest. ⅜, 492.19; C. H. West & Sons, attest. ⅜, 809.92; 187.63=997.55	1,489 74
	30.	" paid Klink & Wickenberg, 233.58; Klink & W., for family, 98.05	331 63
		" paid Mills, Beacl. & Co., ⅜ family, 34.84; Mills, B. & Co., attest. ⅜, 75.98	110 82
		" paid C. Rame, attest. ⅜, 26.82; A. Della Tone, attest. ⅜, 42.28	69 10
	31.	" " P. V. Dibble " " 18.50; E. M. Carey's " " 50.06	68 56
Ap'l	1.	" " 3 mo's ass'm't pew in St. Michael's Church, to 1st Jan'y	7 00
	7.	" " Edgerton & Richards, attest. ⅜, 119.20; 8. R. A. Pringle, attest. ⅜, 80.03	119 23
		" " paid R. A. Pringle's ⅜, for family, 27.75; 14. P. R. Lachicotte, attest. ⅜, 423.50; 350	801 08
	15.	" paid Cameron & Mustard, attested ⅜	551 22
		" " " E. Bull's ⅜, for machinery, & wharfage on same	68 29
	17.	" " Reynolds & Co., attest. ⅜, 177.25; M. H. Nathan's, attest. ⅜, 83.50	260 75
		Amount forward	103,754 65
	18.	To paid Love & Wienges, attest. ⅜, 47.61; Dr. Peter Porcher's attest. ⅜, 25 00	72 61
		" paid George W. Olney ⅜. 3.42; 22d. Courier office, attest. ⅜, 19.06	22 48
		" " Courier-office ⅜, 18.20; 28. Otis Phillips, attest. ⅜, 85.25	103 45
May	6.	" " gen. tax, 1856, & dis'ct tax, 1857, for Christ Church	3 57
		" " Hayden & Wilden, attest. ⅜, 28.00; Capt. S. F. Dexter's attest. ⅜, 2.63	30 63
	9.	" paid Jno. Thompson & Co., attest. ⅜, 4.44; Petigru & King, prof. serv., 215.00	219 44
		" paid C. P. Richardson & Bro's attest. ⅜, 3.25; 13. Mathiesen & O'Hara, attest. ⅜, 94.87	98 12
	14.	" paid Dr. W. L. Moultrie, for 14 bbls., 28.88; 19. B. C. Locke, attest. ⅜, 10.33	39 21
	27.	" paid Cha'ston Standard ⅜, 17.40; June 1st. Dawson & Blackman, attest. ⅜, 3.69	21 09
June	1.	" paid John Graveley & Co., ⅜, 5.56; 8th. Dr. Edmund Ravenel, attest. ⅜, 93.00	98 56
139			
June	4.	To paid Mrs. C. Carson, in full of legacy bequeath'd by test	2,000 00
	9.	" " Tho. O'Brien, attest. ⅜, 11.75; 10th, L. Chapins, attest. ⅜, 40.00	51 75
	11.	" paid B. A. Rodrigues, attest. ⅜, 2.00; 12th, Charleston Marine Society, 12.75	14 75
	22.	" paid Robertson B. & Co., ⅜ for plantation & mill supplies	1,869 34
		" " the trustees of Mrs. Caroline Carson, ½ of the residue of the purchase-money of the by order of the will, as per distribution, as made this day between herself & her two sons:	

Say in Elias N. Ball's bond for	$11,000 00	
" " " " " "	9,000 00	
" " $\frac{1}{3}$ of " " 4,000	1,333 33	
And in cash	166 67	
		21,500 00
To paid the trustees of William Carson, on third do.:		
Say in Elias N. Ball's bond for	$11,000 00	
" " " " " "	9,000 00	
" $\frac{1}{3}$ of " " 4,000	1,333 33	
And in cash	166 67	
		21,500 00
To paid the trustees of Jas. P. Carson, on third of the residue, as aforesaid:		
Say in Elias N. Ball's bond for	$11,000 00	
" " " " " "	9,000 00	
" " $\frac{1}{3}$ of " " 4,000	1,333 33	
And in cash	166 67	
		21,500 00
Forward		$172,899 65

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Estate W'm A. Carson.—(Continued.)

Amount forward		$172,899 65
To 2½ % commiss'ns, on receiv'g $184,261.79	$4,606 55	
" " " " paying 172,899.65	$4,322 49	
		8,929 04
Balance due estate		2,433 10
Total		184,261 79

CREDITS.

1856.

Dec. 17.	By rec'd of P. J. Porcher & Baya, nett proceeds sales of sch'r A. E. Conklin, per acc't sales rendered herewith, "A"		770 25
1857.			
Jan. 15.	By Tom Bell, on ⅔ of purchase of Leah		51 24
	" P. J. Porcher & Baya, nett proceeds of 210 negroes, per their acc't sales rendered herewith, marked "B"		119,560 16
	" Same of Dean Hall plantation, marked "C"		49,695 74
	" Sale household furniture, boats, flats, mules, horses, plantation utensils, tools, &c., marked "D"		4,727 08
	" rec'd interest that had accrued on sundry sales of estate, as follows: Say on sale to D. D. Graves, 15.98; on sale to J. Harleston, 15.72; on sale to A. Robertson, 26.68; on sale to O. Harleston, 4.66; on sale to B. Fitzsimons, 7.21; on sale to P. J. Porcher, 2.04; on sale to J. V. Montin, 34.46; on sale to W'm Whaley, 10.95; on sale to Jos. W. Ford, 37.06; on sale to J. S. F. Pope, 44.04; on sale to P. R. Lachicotte, 5.74; on sale to J. A. Hume, 26,59; on sale to J. M. Hapoldt, 13.94; on sale to E. O. Cromwell, 24.42; on sale to E. N. Ball, 159.25; 308.76=468.01; on sale to S. C. Blackwood, 22.38; on sale to A. J. Salinas, 10.87		770 75
	" rec'd of Dr. Waring 8 mo's rent pew in St. Michael's Church		30 00
M'ch 11.	" " Gov. Alston, for pew No. 10, sold to him		500 00

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M'ch 31.	By rec'd of K. S. Ball, for 135 bu. rice-flour, had in July 1854		45 50
May 11.	" " P. J. Porcher & Baya, nett proceeds sale of Sarah & her three children, per acc't sales marked "E"		1,194 00
June 3.	" " T. G. Simons & Sons am't due testator as sec'y & treas. of the Strawberry Club		39 69
" 16.	" " P. J. Porcher & Baya, nett proceeds of sale of old Frank, per their acc't sales, marked "F"		181 57

	Amount forward		177,565 99
" "	By E. N. Ball, for 6 bbls. small rice		93 00
22. "	Robertson & Blacklock & Co., nett proceeds of 90½ bbls. rice, per their acc't sales, marked "G"		1,810 76
"	same am't collected for 476 ⅔ bbls. furnished, 54 bbls. coopered, toll on 52 ⅔ bbls. rice (crop of 1855) pounded at Dean-Hall Mill, & freight 511 ⅔ bbls. rice, sch'r A. E. Conklin, marked H		1,480 83
"	am't collected for 1,162 ⅔ bbls. furnished, 164 bbls. coopered, & toll on 1,326 ⅔ bbls. rice, pounded at Dean-Hall Mill	3,396 13	
Less 2½ % com'ss. on collecting same, per settlement I		84 90	3,311 23
			$184,261 81
By balance due est. brought down			$2,433 10

N. B. The foregoing balance of 2,433.10 consists as follows:

Say Mrs. Caroline Carson's bond for	1,000
" Ja's L. Petigru' " "	385
And in cash	1,048 10
	$2,433 10

There are also 8 shares So'w. R. R. stock standing in testator's name in the books of the bank.

ALEX. ROBERTSON, *Executor.*

Audited June 25th, 1857.
Recorded book 1, page 254.

142 In court of ordinary.

STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing pages to be and contain a true and correct copy of the annual account of the estate of William A. Carson, late of Charleston, planter, deceased, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this twentieth day of July, eighteen hundred & sixty-six.

GEORGE BUIST, [SEAL.]
Probate Judge.

143 *Estate of Col. William A. Carson in acc't with Alexander Robertson & John F. Blacklock, executors.*

DEBITS.

1857.				
June 26.	To	Geo. Buist, ordinary, 25.00; 29th, Dr. Giddings, 110.60		135 60
July 1.	"	W'm Tennents ⅌., 141.00; 2d, Mercury office, ex'or's notice, 15.60		156 60
13.	"	Mathiesen, O'H. & Co., clothes for Frank, 10.00; W. E. Adams, 3 00		13 00
21.	"	Ev'ng News, 19.05; 23d. J. M. Happoldt ⅌., 9.50		28 55
Aug. 6.	"	Cha's Tennent's ⅌., 132.00; 22d, W. T. White, marble slab, &c., 65.70		197 70
Nov. 7.	"	Gowan & Son' ⅌., 10.00; Dec. 22, Dr. O. C. Rhame' ⅌., 82.50		92 50
1858.				
Jan. 25.	"	Henry Oetjens' ⅌., 26.12; Feb. 4, Dr. C. G. White's ⅌., 74.00		100 12

Feb. 10.	" Mathiesen, O'H. & Co., 19.75; 12th, Stoney & Wiltberger, attes' a/c., 3.25			20 00
	" 2½ % comm's'on rec., 2,895.80; less bal. of last year's a/c., 2,433.10=462.70, @ 2½ %		11 57	
	" 2½ % com'on on pay, 747.07		18 67	
				30 24
	Balance carried down			$2,118 49
				$2,895 80

CREDITS.

1857.				
Jun' 22.	By balance per a/c. rend. to ordinary		2,433 10	
July 1.	" rec'd from Tennent for rice flour	98 25		
	" " " Cha's Tennent for the same	18 50		
			179 75	
1858.				
June 30.	" Mrs. Carson, 1 y'r's int., due 2 inst., on bond of 1,000		70 00	
Feb. 4.	" Dr. C. G. White' mill a/c		24 00	
Ap'l 16.	" am. on div. to July, 1857, on 8 shares S. W. R. R. Bank		138 00	
	" 6 mo's " 1 Jan'y last " " " "		24 00	
May 14.	" J. L. Petigru, for int. on his bond taken up		26 95	
			$2,895 80	2,895 80
	By bal. bro't down, due estate		$2,118 49	

144 N. B.—The foregoing balance of $2,118.49 consists of Mrs. Caroline Carson's bond of $1,000
And in cash 1,118 49
$2,118 49

J. F. BLACKLOCK, *Executor.*

Audited and approved, June 17th, 1858. Record-book K, page 18.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing page to be and contain a true and correct copy of the annual account of the estate of Col. William A. Carson, late of Charleston, planter, deceased, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this 20th day of July, anno Domini eighteen hundred and sixty-six.

(Signed) GEORGE BUIST, [SEAL.]
Judge of Probate.

145 *Estate of Col. W'm A. Carson in account with Alex'r Robertson and John F. Blacklock, executors.*

DEBITS.

1858.			
June 17.	To paid ordinary's fees, 4.00		4 00
	Jan. 28, 1859, Hayne & Miles in full of judg't against Sam Burke, the late Col. Carson being security, 445.64		445 64
May 30.	P. Lachicotte, bal. due him as engineer, and miller in 1857.		100 00
July 1.	" H. H. DeLeon, for 1,200 city 6 per c't stock		1,200 00
	" 2½% commiss. on receiving 2,335.62; less bal. of last year's a/c, 2,118.49=217.13		5 42

	2½% commission on paying 1,749. 64	43. 47
"	balance consisting of bal. due on Mrs. C. Carson's bond 481.13; and cash 55.69	536 82
		$2, 335 62

CREDITS.

1858.			
June	5.	By balance per acc't rendered the ordinary	2, 118 49
July	3.	" rec'd 6 mo's div. on 8 shares in S. W. R. R. Bank	38 00
1859.			
Jan'y	6.	" " " " " " "	40 00
M'ch	7.	" " of Mrs. Carson, in full, of int. on her bond to date	81 13
July	1.	" " 6 mo's div. on 8 shares in S. W. R. R. Bank	40 00
		" " 1 q'rt'r's int. on $1, 200 city stock	18 00
			2, 335 62

(Signed) J. F. BLACKLOCK, *Executor.*

Audited & approved July 18th, 1859. Recorded book K, page 420.

146 In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing page to be and contain a true and correct copy of the annual account of the estate of Col. W'm A. Carson, late of Charleston, planter, deceased, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, the 20th day of July, anno Domini, eighteen hundred and sixty-six.

(Signed) GEORGE BUIST, [SEAL.]
Judge of Probate.

[U. S. rev. stamp, 5 cts.]

147 *Est. of Col. W'm A. Carson in account with Alex. Robertson and John F. Blacklock, executors.*

DEBITS.

1859.				
July	20.	To paid Geo. Buist, ordinary, auditing account		2 50
1860.				
July	11.	" 2½% commission	730 50	
		less bal. of last year's acc't	536 82	
			$193 68	4 84
		Balance		723 16
				730 50

CREDITS.

1859.				
July	1.	By balance p'r acc't rendered to ordinary	536 82	
1860.				
Jan.	6.	" 6 mo's div. on 8 shares in S. W. R. R. Bank	40 00	
		" 2 q'rt's interest on 1, 200 city 6%	36 00	
May	11.	" Mrs. Carson, 1 y'r's int. due on her bond of 48118.	33 68	
July	3.	" 2 q'rt'r's interest on ', 200 city 6%	36 00	
	10.	" 6 mo's div. on 8 old & 8 new shares S. W. R. R. B'k	48 00	
			$730 50	730 50

J. F. BLACKLOCK, *Executor.*

Audited & approved July 14th, 1860. Record book L., page 219.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing to be and contain a true and correct copy of the annual account of the estate of Col. W'm A. Carson, late of Charleston, planter, deceased, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this 20th day of July, A. D. eighteen hundred & sixty-six.

(Signed,) GEORGE BUIST, [SEAL.]
Judge of Probate.

[U. S. rev. stamp.]

148 *Estate W'm A. Carson in account with A. Robertson, executor.*

DEBITS.

1862.				
Nov. 13	To paid	W. D. Rivers, con. war tax for Christ C'h Parish		12 50
1863.				
July 10.	"	" general tax 1862 for St. P. & St. M		2 04
1864.				
M'ch 11.	"	" am't fund in con. 4%, as per notice Bank Charleston		800 00
" 28.	"	" general tax 1863 for St. P. & St. M		9 74
Dec. 19.	"	" conf. war tax in 4% & in cash		77 80
		bal. due estate in conf. currency		236 91
				$1,138 99

CREDITS.

1862.				
July 11.	By	balance at credit of est. this day	546 99	
Oct. 7.	"	1 q'rt'rs int. on 1,200 city 6%, 18.00; Jan. 3, 1863, same, 18.00	36 00	
1863				
Jan. 15.	"	6 mo's div. on 8 old & 8 new shares S. W. R. R. Bank	60 00	
Ap. 2.	"	1 q'rt's int. on 1,200 city 6%, 18.00; July 31, 1 q'r's int. on same, 18.00	36 00	
1864				
Jan'y 6.	"	2 q'rt's int. on 1,200 city 6%, 36.00; Jan'y 16, 12 mo's int. on S. W. R. R. B'k, 164.00	200 00	
Ap'l 8.	"	1 q'rt's int. on 1,200 city 6%, 36.00; July 18, 1 q'rs int. on city 6%, 18.00	36 00	
Aug. 3.	"	6 mo's div. on R. R. & B'k stock, 78.00; Nov. 14, 1 q'r's int. on city 6%, 18	96 00	
1865.				
Feb. 5.	"	6 mo's div. on R. R. & B'k stock	128 00	
			$1,138 99	1,138 99
1865.				
Dec. 1.	To	bal. due est. this day in conf. currency	$236 91	

E. E. Charleston, July 6, 1866.

A. ROBERTSON, *Executor.*

Audited and approved July 6th, 1866. Recorded book N, page 165.

149 In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing pages to be and contain a true and correct copy of the original annual account of the estate of W'm A.

Carson, late of Charleston, planter, deceased, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this 23d day of July, anno Domini eighteen hundred and sixty-six.

(Signed) GEORGE BUIST, [SEAL.]
Judge of Probate.

[Rev. stamp, 5 c'ts.]

150 *Mrs. Caroline Carson in account with A. Robertson, executor W'm A. Carson.*

DEBITS.

1862.			
Nov. 1.	To this am't at your debit with Robertson, Blacklock & Co., as per their balance sheet of this date		53 81
" 20.	" p'd conf. war tax, S't P and S't M, 107.40		107 40
May 5, 1863, paid H. H. De Leon for $500 conf. 8 % bonds, *a* 103, 515.00; Oct. 20, con. war tax, 45.00			560 00
1864.			
M'ch 5.	" paid tax on income, 77.00; M'ch 18th, funded in 4 % certif. 200.00		277 00
	" " bonds, $5,000, *a* 5 % prem., 5,775		5,775 00
Dec. 19, paid conf. tax, $1,000 *a* 65 %, 650, and in cash 205.00			855 00
			$7,628 21
	Commissions on receiv'g $7,479.14 *a* 2½ %	186 98	
	" " paying 7,628.21 " "	190 70	
			377 68
			$8,005 89

CREDITS.

1863.			
Jan. 6.	By 1 q't's int. on 160 city 6 %, 2.40; Ap. 2d, 1 q'rs int. on 160 city 6 %, 2.40	4 80	
Ap'l 23.	" rec'd in full of E. N. Ball int. & int. on int. on his bonds of $11,000 & 9,000, and on her ½ portion in his " of $4,000, say 1,333 33	$5,072 29	
July 31.	" 1 q'rs int. on 160 city 6%, 2.40; Jan. 6, 1864, 2 q'rs int. on same, 4.80	7 20	
M'ch 24.	" int. to Jan. 1st on $20,500 conf. 8 %, 1,127.73; Ap. 8, 1 q'rs int. on 160 city 6 %, 2.40	1,130 13	
July 20.	" 6 mo's int. on 20,500 conf. 8 %, 820.00; July 21, int. on 5,500 conf. 6 %, 144.92	964 92	
Nov. 14.	" 2 q'rs " " 160 city 6 %, 4.80; Jan. 14, 1865, rec'd for 200 conf. 4 % *a* 65, 130.00	134 80	
	" " 6 mo's int. on $5,500 confed. 6 %	165 00	
			$7,479 14
	Balance due executor this day		526 75
			$8,005 89

E. E. Charleston, July 6, 1866.

A. ROBERTSON, *Executor.*

Audited & approved July 6th, 1866. Recorded book N, page 165.

151 In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston County:

I do hereby certify the foregoing pages to be and contain a true and correct copy of the original account of the estate of William A. Carson,

late of Charleston, planter, deceased, for Mrs. Carolina Carson, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this twenty-third day of July, anno Domini eighteen hundred and sixty-six.

(Signed) GEORGE BUIST, [SEAL.]
Judge of Probate.

[Rev. stamp, 5 c'ts.]

Mrs. Carline Carson in account with Alexander Robertson, trustee.

DEBITS.

1863.				
Ap'l 29.	To paid H. H. De Leon for $8,000 conf. bonds *a* 103, (8 %).....			8,240 00
30.	" " " 12,000 " " "			12,360 00
	" commissions on paying $21,000 *a* 2½ %.....		515 00	
	" " " receiv'g 21,336.80 "		633 42	
				1,048 42
				$21,648 42

CREDITS.

1862.			
Nov. 1.	By this am't at y'r credit, on books of Robertson, Blacklock & Co., as per their balance sheet this day.....	$3 47	
152 1863.			
Ap'l 23.	Rec'd of E. N. Ball, in full of the principal of his two bonds of $11,000 & 9,000, and for your ⅛ interest in his bond of $4,000, say $1,333.33.....	$21,333 33	
		21,336 80	
	Balance carried down, & due trustee.....	311 62	
		$21,648 42	21,648 42

E. E. Charleston, July 6, 1866.

A. ROBERTSON, *Trustee.*

Audited & approved July 6th, 1866. Recorded book N, page 166.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing to be and contain a true and correct copy of the original annual account of the estate of William A. Carson, late of Charleston, planter, deceased, for Mrs. Caroline Carson, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office at Charleston, this twenty-third day of July, anno Domini eighteen hundred and sixty-six.

(Signed) GEORGE BUIST, [SEAL.
Judge of Probate.

153 *William & James P. Carson, minors, in acc't with A. Robertson, executor W'm A. Carson, & trustee.*

DEBITS.

1863.			
M'ch 7.	To paid attendance, & funeral expenses, on Phœbe.....		64 00
May 5.	" " H. H. De Leon, for $5,000 conf. 8 % bonds, @ 103.....		5,150 00
30.	" " city-tax 1863; July 10, gen. tax S't P. & S't M, 58.24.....		57 24
Oct. 20.	" " packing wine, 32.50; freight, 17.50; drayage, 3.10.....		53 10

1864.				
Feb. 29.	" " conf. tax on income 1863, 20.00; Aug. 1st, city taxes, 5.00..			25 00
	" sundry payments to old Matilda, to 7 Feb., 1865, for support.....			151 00
	" nursing, &c., for Phœbe, not charged.....			35 00
				$5,545 34
	" 2½ % commissions on rec'g, $6,006.18.....		150 15	
	" " " paying out 5,545.34.....		138 63	
				288 78
	" bal., carried down to credit, in confed. currency			172 06
				$6,006 18

CREDITS.

1862.			
Nov. 1.	By this am't at the credit of this % on books of Robertson B. & Co., as per their bal. sheet, this day.....	$202 19	
" "	6 mo's int. on State bonds, 30.00; Jan. 6, 1863, ¼-div. on 1,400 city 6 %, 21.00.....	51 00	
1863.			
Jan. 15.	" 6 mo's int. on State bonds, 30.00; April 1, q'r's div. on 1,400 city 6 %, 21.00.....	51 00	
July 31.	" 1 q'r's int. on 1,400 city 6 %, 21.00; Jan. 6, 1864, 2 q'r's div. on 1,400 city 6 %,.....	63 00	
1864.			
M'ch 23.	" int. on 5,000 8 % conf. bonds, 277.30; Ap'l 8. 1 q'r's div. on 1,400 city 6 %, 21,00.....	298 30	
July 27.	" 1 q'r's int on 1,400 city 6 %, 21.00; 6 mo's' int. on $5,000 conf. 8 %.....	221 00	
" "	18 mo's' int. on 1,000 State-bond, 20 % premium, 108.00; Nov, 14, 1 q'r's int. city 6 %, 21.00.....	129 00	
1863.			
Ap'l 23.	" E. N. Ball, in full, principal of $4,000, & 990.69 int. on bond.....	4,990 69	
		$6,006 18	6,006 18

(E. E.) Charleston, July 6. 1866.

A. ROBERTSON, *Trustee.*

Audited & approved July 6th, 1866. Recorded book N, page 167.

154 In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing page to be and contain a true and correct copy of the original account of the estate of William A. Carson, late of Charleston, planter, deceased, for William and James P. Carson, minors, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this twenty-third day of July, anno Domini eighteen hundred & sixty-six.

(Signed) GEORGE BUIST, [SEAL.]
Judge of Probate.

155 *Mrs. C. Carson, guardian of James P. Carson, a minor, in % with A. Robertson, executor W'm A. Carson.*

DEBITS.

1862.		
Nov. 1.	To this am't at debit, as per balance-sheet of books of Robertson, Blacklock & Co. of this date.....	260 00

1863.			
Ap'l 18.	" paid him 150.00; June 8, paid him 100.00; July 2d, paid him 75		325 00
July 7.	" " " 500 ; Aug. 12, " " 50. ; Sept. 21, " " 25.		575 00
Oct 15.	" " " 50 ; Oct. 20, conf. tax, 18. ; Nov. 20, " " 75.		143 00
1864.			
Feb. 22.	" " " 200. ; M'ch 30, paid him, for conf. 6 %, $2,000, @ 50 % pre'm		2,510 00
July 28.	" quinine & underclothing, 250.00 ; 22d, H. D. Lesesne' bill, 166,38		416 38
Sept. 1.	" him, 110.00 ; Dec. 2d, 1862, paid him, 100.00 ; Jan. 2, 1863, paid him, 200.00		410 00
			$4,689 38
	2½ % com's. on paying $4,639.38	115 98	
	" " " " receiving 3,123.95	78 09	
			194 07
			$4,833 45

CREDITS.

1863.			
June 23.	By rec. of trustees of Jas. P. Carson, 3 y'rs' allowance for his support & education, @ 1,000 per annum	$3,000 00	
1864.			
June 21.	" rec'd int. to 1 inst. on $2,200 conf. 6 % stock	57 95	
1865.			
Jan. 15.	" " 6 mo's' " " " " "	66 00	
		3,123 95	
	balance carried down	1,709 50	
		$4,833 45	4,833 45

(E. E.) Charleston, 6 July, 1866.
(Signed) A. ROBERTSON, *Executor.*

Audited & approved July 6th, 1866. Recorded book N, page 167.

156 In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing page to be and contain a true and correct copy of the original annual account of the estate of William A. Carson, late of Charleston, planter, deceased, for Mrs. C. Carson, guardian of Ja's P. Carson, a minor, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this 23d day of July, anno Domini eighteen hundred and sixty-six.

(Signed) GEORGE BUIST, [SEAL.]
Judge of Probate.

[U. S. rev. stamp 5-c'ts.]

Mrs. C. Carson, guardian of William Carson, a minor, in ⅜ with A. Robertson, executor W'm A. Carson.

DEBITS.

1862.		
Nov. 1.	To this am't at debit of this ⅜, as per bal.-sheet of Robertson Blacklock & Co.'s books of this date	200 00
1863.		
June 27.	" paid Dr. H. R. Frost' bill for attendance on Brain	16 00

Oct'r 20.	" " conf. tax to July, 28.00; conf. 6 % bonds, 3,700, @ 5 % prem., 3,885.00			3,913 00
	" commissions on paying $4,129.00		$103 22	
	" " " receiving 3,208.51, 2½ %		80 21	
				183 43
				$4,312 43

157 CREDITS.

1863.			
June 23.	By rec. from trustees William Carson, 3 y'rs allow. for his support & education, @ $1,000 per annum	$3,000 00	
1864.			
July 2.	" int. to 1st inst. on $3,700 confed., 6 %	97 51	
	" 6 mo's " " " " "	111 00	
	Balance carried down	1,103 92	
		$4.312 43	4,312 43

(E. E.) Charleston, July 6, 1866.
(Signed) A. ROBERTSON, *Executor.*

Audited & approved July 6th, 1866. Recorded book N, page 166.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing to be a true and correct copy of the original account of the estate of William A. Carson, late of Charleston, planter, deceased, with Mrs. C. Carson, guardian of William Carson, a minor, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this twenty-third day of July, anno Domini eighteen hundred and sixty-six.

GEORGE BUIST, [SEAL.]
Judge of Probate.

[U. S. rev. stamp, 5 c'ts.]

158 *William Carson, a minor, in acc't with Alexander Robertson, trustee.*

DEBITS.

1863.				
Ap'l 30.	To paid H. H. DeLeon for $23,000 confed. 8 % bonds, @ 1.03			23,690 00
June 22.	" " Mrs. Carson, guardian, 3 y'rs' allowance for suppport and education, allowed her by court of equity, $1,000 per annum,			3,000 00
Feb. 29.	" paid confed. tax on income for 1863			77 00
	" " " " $1,150, @ 65 % = 747.50, & in cash, $235.00			982 50
				$27,749 50
	" 2½ % commissions on paying $27,749.50		$693 74	
	" " " receiving 29,049.74		764 24	
				1,419 98
				$29,169 48

CREDITS.

1862.			
Nov. 1.	By this am't at credit of this a/c, as per bal.-sheet of books of Robertson, Blacklock & Co., this date	211 46	
	6 mo's' int. on $1,000 State bond, 30.00; Jan. 6th, 1863.		
	1 q't's int. 660 city 6 %, 9.90	39 90	

1863.			
Jan'y 18.	6 mo's int. on $1,000 State bond, 30.00; Ap'l 2, 1863, 1 q't's int. 660 city 6 %, 9.90	39 90	
Ap'l 23.	By rec'd of E. N. Ball, in full of prin. of his two bonds of $11,000 & 9,000, and for his ½ portion in bond of $4,000, say, $1,333.33: also, in full of int. & int. on int., say, $5,072.29	26,405 62	
July 31.	" 1 q'r's int. on 660 city 6 %, 9.90; (1864,) by 2 q'r's int. on same	29 70	
M'ch 23.	" int. to 1st Jan. on $23,000 confed. 8 % bonds	1,265 46	
Ap'l 8.	" 1 q'r's int. on 660 city 6 %, 9.90; July 5, 6 mo's int. 23,000 confed. 8 %, 920.00	929 90	
July 27.	" 1 q'r's int. on 660 city 6 %, 9.90; 18 mo's int. on 1,000 State bond, 108.00	117 90	
Nov. 14.	" 1 q'r's int. on 660 city 6 %	9 90	
		29,049 74	
	Balance carried down	119 74	
		$29,169 48	29,169 48

159 (E. E.) Charleston, July 6th, 1866.

A. ROBERTSON, *Executor.*

Audited & approved July 6th, 1866. Recorded book N, page 168.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby ceritfy the foregoing page to be and contain a true and correct copy of the original annual account of the estate of William A. Carson, late of Charleston, planter, deceased, for William Carson, a minor, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this twenty-third day of July, anno Domini eighteen hundred and sixty-six.

GEORGE BUIST, [SEAL.]
Judge of Probate.

[U. S. rev. stamp, 5 c'ts.]

160 *James P. Carson, a minor, in account with Alexander Robertson, trustee.*

DEBITS.

1863.			
Ap'l 30.	To paid H. H. DeLeon for $23,000 8 % bonds, @ 1.03		23,690 00
June 22.	" " Mrs. Carson, 3 years' allowance for support & education.		3,000 00
1864.			
Feb'y 29.	" " conf. tax on income, (1863,) 7,700; Dec. 19, conf. tax, 1,150 @ 65, 747.50; cash, 235.00		1,059 50
Dec. 24.	" " Ja's P. Carson, in advance, as per specific receipt		3,000 00
	" " Edgerton, Richards & Co. (% for clothes.)		415 00
			31,164 50
	" 2½ % commissions on paying $31,164.50	779 11	
	" " " receiving 29,052.74	726 32	
			1,505 43
			$32,669 93

CREDITS.

1862.		
Nov. 1.	By this am't at credit of his %, as per balance-sheet of Robertson, Blacklock & Co.'s books, this date..	214 45

	" 6 mo's int, on State 1,000 bond, $30.00; Jan'y 6, 1863, 1 q'r's int. on 660 city 6 %, 9.90	39 90	
	" 6 mo's int., on State 1,000 bond, 30.00, Ap'l 2d, 1863, 1 q'r's int, on 660 city 6 %, 9.90	39 90	
Ap'l 23.	" rec. of E. N. Ball, in full of princip. & int. of his 2 bonds of $11,000 & 9,000, and for his ⅓ portion of $4,000, say $1,333.33; also, in full of the int. and int. on int. to this date, say $5,072.29	26,405 63	
July 31.	" 1 q'r's int. on 660 city 6 %, 9.90; Jan. 5th, 1864, 2 q't's int. on same, 19.80	29 70	
1864.			
M'ch 23.	" int. on $23,000 conf. bonds, 1,265.46; Ap'l 8th, 1 q'r's int on same, 9.90	1,275 36	
July 5.	" 6 mo's int. on 23,000 conf. bonds, 920.00; July 27, 1 q'r's int. on same, 9.90	929 90	
	" 18 mo's int. on State bond, @ 20 % premium, 108.00	108 00	
161			
July 5.	By 1 q't's int. on city 6 % stock	9 90	
		29,052 74	
	Balance carried down	3,617 19	
		$32,669 93	$32,669 93

(E. E.) Charleston, July 6th, 1866.

A. ROBERTSON, *Trustee.*

Audited and approved July 6th, 1866. Recorded book N, page 169.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

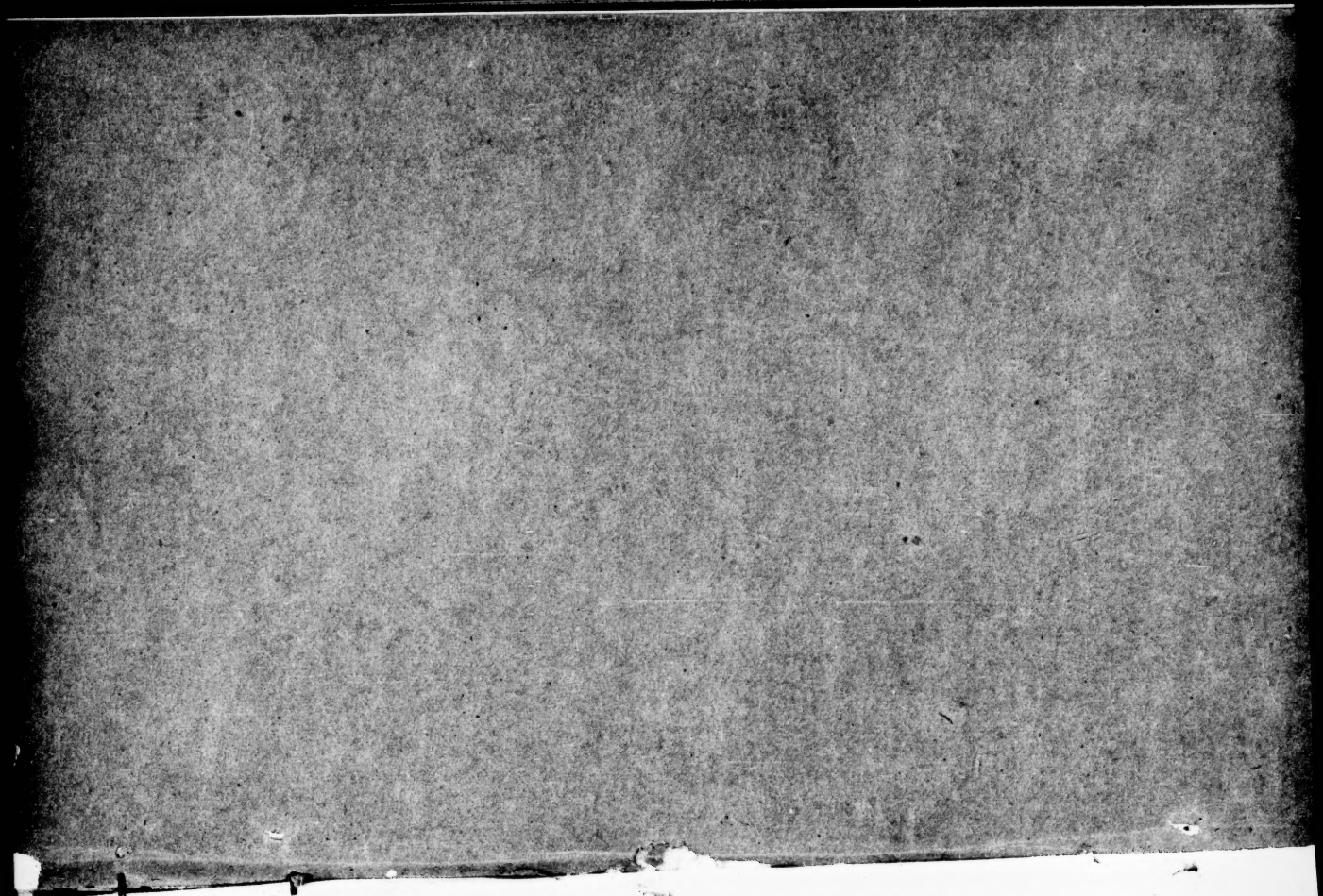
I do hereby certify the foregoing pages to be and contain a true and correct copy of the original annual account of the estate of William A. Carson, late of Charleston, planter, deceased, for James P. Carson, a minor, filed and recorded in this court on the day and year above set forth.

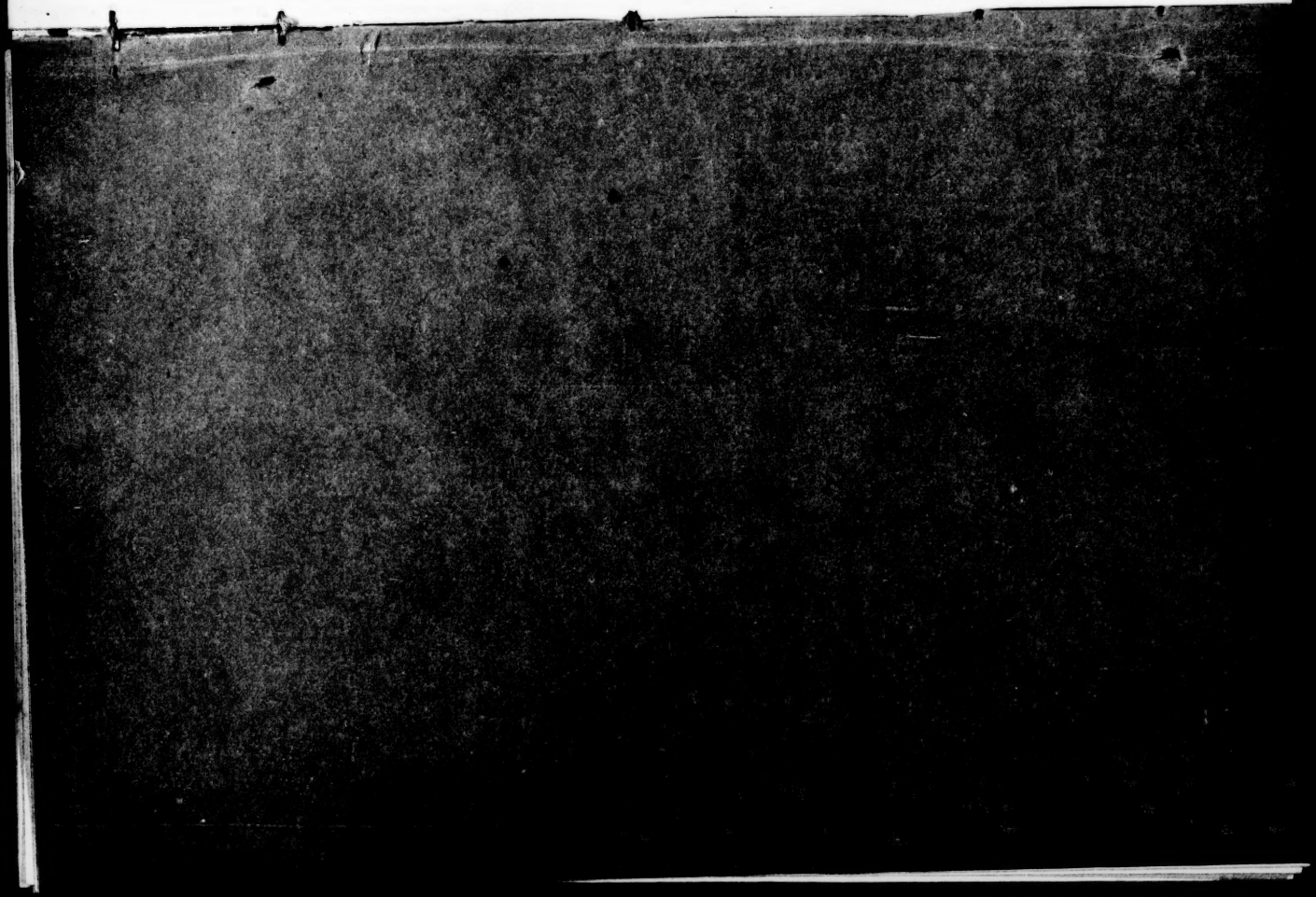
Given under my hand and seal of office, at Charleston, this twenty-third day of July, anno Domini eighteen hundred & sixty-six.

GEORGE BUIST, [SEAL.]
Judge of Probate.

[U. S. rev. stamp, 5 c'ts.]

(Indorsement on cover:) No. 425. Alexander Robertson, John Freer Blacklock, William McBurney, and William J. Ball, appellants, vs. Caroline Carson. South Carolina C. C. U. S. Filed 24th September, 1872.





SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM—1872.

ALEXANDER ROBERTSON, JOHN FREER BLACKLOCK, WILLIAM McBURNEY AND WILLIAM J. BALL, APPELLANTS, No. 425.

vs.

CAROLINE CARSON, RESPONDENT. (No. 209.)

STATEMENT OF CASE ON BEHALF OF WILLIAM McBURNEY, ONE OF THE APPELLANTS.

The bill is filed by Mrs. Caroline Carson, of the City of New York, and a citizen of the State of New York, against Alexander Robertson and John Freer Blacklock, executors of the late William A. Carson, William McBurney, this appellant, Elias Nonus Ball and William Ball, citizens of the State of South Carolina, and William Carson and James Petigru Carson, both of the City of New York and citizens of the State of New York.

The bill states that W. A. Carson made his will 11th March, 1854, and sets out parts of the said will which so far as affects this appellant's case, are comprised in a few sentences. "I "order and direct my executors, or such one as may qualify here- "on, to sell all the rest of my estate, real and personal, as soon "after my decease and upon such terms as they, or he, may deem "most judicious. Until such sale takes place, I order and direct "my executors to apply so much of the income of my estate to "the maintenance and support of my wife and children, and the "education of the latter as they, or he, in their discretion may "deem fit and proper. From the balance of the income, until

"the sale, and from the proceeds of sale I order and direct my "debts to be paid, and the residue of the purchase money to be "divided into three equal parts, and held by my executors or my "qualified executor, in trust for the following purposes," viz:

First. To pay the interest of one-third to his wife, the complainant, during her life.

Second. To pay the interest of another third to maintenance and education of his son William Carson, one of the defendants, during minority, and the capital, with accumulation, at his attaining his age.

Third. To pay the interest of the remaining third in the same way for his son James P. Carson, another defendant.

The will gives the rest and residue of the estate to the two sons, William and James, and it nominates, constitutes and appoints testator's friends, Alexander Robertson and John F. Blacklock, two other defendants, executors of this last will and testament, and testamentary guardians of his children. That the testator died 17th August, 1856, leaving his will unrevoked, which was proved by both the executors named therein, who qualified thereon, and entered into possession of the estate of their testator, both real and personal, and have ever since received the rents and profits thereof, and having paid all the debts, still have in their possession a large balance of testator's estate, of the value of $80,000. The bill further states that the complainant's two sons, William Carson and James P. Carson, having both attained the age of twenty-one years, and being citizens of New York, assigned to her all their right, title and interest to and in any property of any kind to which they were entitled under their father's will, and files copies thereof with the bill, as Exhibits B and C.

The bill states that she, both as legatee under the said will, and as assignee of her two sons, has applied to the said executors. The stating part of this bill does not mention the defendant, William McBurney, at all.

Then the bill alleges various pretences by the said executors, and charges to the contrary: 1st. That they have no balance,

because they have conveyed and released the real estate, or a large part thereof, or a lien which they had in the same as executors to one Elias Nonus Ball, whereas, the Bill charges that they did not convey nor release, but that they are still seized of all the lands, or have a lien thereon, or if they have conveyed they did so without values, and should account. 2d charge. That Elias Nonus Ball and one William McBurney, who pretends that he is seized of or entitled to the lands of the testator, aided and abetted the said executors in committing the said breach of trust, and that if it be true that the said executors conveyed the said lands, or released their lien upon the same to the said E. N. Ball, knowing the interest of complainant and her sons, did without paying valuable consideration, persuade and procure the said executors to convey the said lands, or release their lien to him, and also, that if E. N. Ball truly conveyed a good legal title in the said lands to the said W. McBurney, as is pretended, he, the said W. McBurney became seized of the same without a valuable consideration, and with full knowledge that the said A. Robertson and J. F. Blacklock, being trustees as aforesaid, and conveyed the said lands or released their liens, if they did so, as is pretended, to E. N. Ball, in breach of the trust, and without receiving from the said E. N. Ball a valuable consideration; and that he the said W. McBurney, aided and procured the said A. Robertson and J. F. Blacklock to commit aforesaid breach of trust; and that both E. N. Ball and W. McBurney derived great advantages from the said breach of trust, then charges that E. N. Ball should make good all loses that have accrued to complainant by the said breach of trust, and the said W. McBurny, if he be seised of the said lands, as is pretended, should be declared to hold them for the benefit of the complainant.

Then alleges pretence by executors that they have no balance in their hands because they released to E. N. Ball large debts due by the said Elias N. Ball and W. McBurney to the said A. Robertson and J. F. Blacklock, as executors of the said testator. Charge is, that they, the executors, never released, or if they have it was without valuable consideration and with full

knowledge that they were trustees for complainant and her sons.

The bill then, after propounding various interrogatories to the various defendants, goes on to pray "that the said "defendants may answer the premises and that an account may "be taken of the real and personal property and of the debts "and legacies of the said testator; and that the said Alexander "Robertson and John Freer Blacklock may be decreed to pay "to your oratrix the surplus of the estate of the said testator "after the payment of all his just debts and legacies, and on "their failure to do so, that the aforesaid mortgage held by the "said Alexander Robertson and John Freer Blacklock may be "foreclosed, or if it prove to have been released by the said "Alexander Robertson and John Freer Blacklock, then that "the said Elias Nonus Ball may be decreed to make good to "your oratrix the purchase money of the lands hereinbefore "spoken of, and on his failure to do so that the said William "McBurney may be decreed to hold the lands hereinbefore "spoken of as trustee for the benefit of your oratrix, and "that the said William Ball may be decreed to make good to "your oratrix the debt released to him as hereinbefore discribed "&c." Concluding with prayer for injunction against the executors from transferring assets, and releasing debts, and to restrain William McBurney from committing waste, and for subpœna for the persons named as defendants. (*Transcript Record*, folio 15, 16.)

Upon this bill, subpœna issued for the parties called defendants and was returned as served on William McBurney, 14 August, 1866; but was returned November 11, 1866, N. E. I., as to John F. Blacklock, Elias N. Ball, James P. Carson, William Carson, Alexander Robertson and William Ball.

Appearances were afterwards given 21st November, 1866, for J. F. Blacklock by Henry E. Young, and for Alexander Robertson by B. H. Rutledge; but there was never any appearance given for or services on E. N. Ball or for the two sons.

On Monday, 3d September, 1866, an order for security for costs was made, and staying all future proceedings in the cause

against the defendant, William McBurney, until such security be given. (*Transcript Record*, folio 32.)

The Clerk reported 25th October, 1866, that security should be given for $500, which was reduced by the Court, in an order (of which the Clerk has omitted to give the date) to $250. (*Transcript Record*, p. 13–14.)

Bonds were executed by a resident of New York, in the City of New York, on the 24th November, 1866, out of the jurisdiction of the court, to which objections was made, which objection were not heard until 6th February, 1867, when the objections were overruled and security approved. (*Transcript Record, p. 25.*)

In the meantime the complainant substituted another bill of a totally different character, on the 14th December, 1866, and took the original bill off the file without any order of court or consent of parties, and served copies of the new bill upon the defendants, but no subpœnas were sued out on this new bill.

The statements of this new bill as far as it affects this appellant, William McBurney, are as follows:

"And your oratrix sheweth that as she is informed and be-
"lieves the said William McBurney, at some time in April, of
"the year of our Lord one thousand eight hundred and sixty-
"three, (1863,) being desirous of purchasing from the said Elias
"Nonus Ball, the said 'Dean Hall,' for certain illegal promis-
"sory notes issued in violation of the Constitution of the United
"States, advanced a large amount of such notes to the said Elias
"Nonus Ball, to enable him to obtain, by means of the said
"notes, from the said Alexander Robertson and John Freer
"Blacklock, a release of the aforesaid mortgage of 'Dean Hall'
"securing the same; that thereupon the said Alexander Robertson
"and John Freer Blacklock, Trustees, as aforesaid, accepted the
"said notes in payment of the said bond of the said Elias Nonus
"Ball, given by him to the said Alexander Robertson and
"John Freer Blacklock, to secure the purchase money of the
"said 'Dean Hall;' that the said Alexander Robertson and
"John Freer Blacklock thereupon released the said bond and
"entered satisfaction, or agreed to enter satisfaction upon the

"aforesaid mortgage of 'Dean Hall' securing the said bond in "consideration of the said illegal notes, and that thereupon the "said Elias Nonus Ball, in consideration of the said illegal "notes advanced or paid to him as aforesaid by the said William "McBurney the said 'Dean Hall' plantation did convey to the "said William McBurney." (*Transcript Record, folio 53.*)

The charges against the appellant, William McBurney, are:

"That the said William McBurney having purchased 'Dean "Hall' plantation from the said Elias Nonus Ball for the said "illegal notes, with full knowledge that the aforesaid mortgage "thereon had been held by the said Alexander Robertson and "John Freer Blacklock as trustees for the benefit of your ora-"trix, then absent as aforesaid, and her infant sons, and had "been satisfied, or agreed to be satisfied by the said trustees "for the said illegal notes transferred to them by the said "Elias Nonus Ball, and having aided the said Elias Nonus Ball "to procure such satisfaction, cannot hold the said 'Dean Hall' "plantation discharged of said mortgage." (*Transcript Record, "folio 59.*)

"The prayer of the new bill against William McBurney is:

"That the said Elias Nonus Ball may be ordered to deliver "up the said bond given for the purchase money of 'Dean Hall,' "and the said mortgage deed given by him to secure the said bond, "and may be decreed to pay the amount due upon the said bond,

* * * * * * *

"and that the said 'Dean Hall' plantation be declared subject to "the lien of the aforementioned mortgage thereof, and that the "said mortgage be foreclosed, and that in the mean time the said "William McBurney be enjoined from conveying the said 'Dean "Hall,' and from committing waste thereon."

To these proceedings on the part of the complainant, the defendant, William McBurney, on the 4th March, 1867, demurred generally to the original bill, (*Transcript Record, folio 63, 64,*) and at the same time filed under protest answer to the substituted bill. (*Transcript Record, folio 66, 78.*)

The answer to the substituted bill, thus filed under protest, admits the last will and testament of William A. Carson, at his

death, but denies knowledge of the general conduct of the executors in reference to their management of the estate of their testator. Admits that the executors did convey "Dean Hall" to Elias N. Ball, and for part of the purchase money—took the bonds of the said purchaser to themselves as executors, conditioned altogether for the payment of $35,000, and to secure the same, took a mortgage of the said plantation. Denies that Elias N. Ball sold to him the said plantation, but explains that in December, 1862, "the mercantile firm of Hyatt, McBurney "& Co., whereof Edmund Hyatt, a citizen of the State of New "York, defendant; this William McBurney, William Hasseltine, "Alfred L. Gillespie and Thos. R. McGahan, then citizens of the "State of South Carolina, were members, having a large amount "of cotton and wishing to change some of their investments into "real estate, purchased this plantation at the price of $100,000, "and paid on account of the purchase money more than $80,000, "whereupon the said Elias N. Ball conveyed the said plantation "to the appellant William McBurney and Alfred L. Gillespie, one "of his partners with *habendum* unto this appellant, William "McBurney, and the said Alfred L. Gillespie, and the survivor of "them, and the heirs and assigns of such survivor forever, but "to and for such uses, intents and purposes as they the said "William McBurney and Alfred L. Gillespie, or the sur- "vivor of them shall by any deed in writing duly signed by "them or him in the presence of two witnesses from time to "time, limit, direct or appoint, and until such limitation, direc- "tion or appointment to the only proper use and behoof of "Edmund Hyatt, William Hasseltine, Thomas R. McGahan and "the said William McBurney and Alfred L. Gillespie, their res- "pective heirs and assigns, in such shares, interests and propor- "tions as they now are entitled to in the capital and profits "of the present copartnership of Hyatt, McBurney & Co."

The answer goes on to state that the said copartnership being about to expire on the 31st May, 1863; that Edmund Hyatt sold his interest in the copartnership to this appellant William McBurney and the other copartners, and that to secure the bond of the said copartners, to the said Edmund Hyatt, the said

appellant William McBurney and the said Alfred Gillespie by deed declared limited and appointed the said plantation to the use of the said Edmund Hyatt, his heirs and assigns; that said Edmund Hyatt is now and then was a citizen of New York; that William Hasseltine then, and at the time of filing the answer was resident and domiciled at or near Liverpool, England. That Alfred L. Gillespie had, since the filing of the bill, removed to New York, and that Elias N. Ball, as he was informed, was then a resident of the State of New Jersey. The answer asserts that Edmund Hyatt, William Hasseltine, Alfred L. Gillespie, Thomas R. McGahan and Elias Nonus Ball, are necessary parties, and in fact indispensable parties to the said bill. Three of whom were out of the jurisdiction of the Court, and one a citizen of the State, whereof the complainant avowed herself a citizen; and insists upon the want of parties as an insuperable objection to the jurisdiction of the Court; sitting as a Court of Equity.

That the payments for the said plantation were made in currency that was universally in use throughout the community as money, which were received in deposit by all the banks in South Carolina at the time, and that the purchase money was in fact paid by checks on the Bank of South Carolina.

The answer denies that the currency was of no value at that time, but on the contrary avers that the purchasers had to sell more than six hundred bales of cotton to raise that sum, and which six hundred bales of cotton would, after the war, have sold for more than $100,000 in legal tender Treasury notes, and that at the filing of the answer would have brought that amount. That Hyatt, McBurney & Co. were purchasers for valuable consideration, without any notice whatever that can affect them with the trusts stated in the bill. That they dealt with the executors of the testator, who were authorized and empowered to sell, and not as trustees changing investment. That they were not liable even if the executors erred in making improper investments of the money paid to them. That the said Hyatt, McBurney & Co. could not be liable, as the discharge and release of the said mortgage was entirely within the

power and authority of the executors in virtue of their office as executors, and this he pleads in bar; that the said William McBurney knew nothing of the matter charged against William Ball, his co-defendant, but submits that he is joined with the said William Ball in one suit, when it appears upon the statements and allegations therein that the bill is for several and distinct causes and matters that have no relation to or dependence upon each other, and that the said bill is therefore liable to the objection of multifariousness which he insists upon; that the complainant in any event being merely a volunteer as to all the estate of the testator, save her life estate in one-third, cannot claim against purchasers for valuable consideration any more than her interest in one-third of said estate for life.

The answer concludes with the usual denial of confederation &c.

To this the complainant filed a general replication.

On Monday the 18th May, 1868, the Court, the District Judge presiding, a motion was made by the Solicitors of the defendants to take the substituted bill of 14th December, 1866 from the file; also a motion to set aside the entry of the cause upon the docket as improvidently and prematurely entered, the cause not being properly at issue, the said Elias N. Ball not having been served, appeared or answered. These motions were refused.

The cause came on to be heard on the 3d June, 1868, before the Circuit Court, the Chief Justice and District Judge presiding, upon the objection of the want of parties, and the question as to parties argued. (*Transcript Record, p. 42.*) The opinion overruling the objection was delivered by Chief Justice Chase, who said:

"In this case the only question is as to parties, and we are "called upon to meet it at the threshold. The objection for "want of parties may be taken at any time in the progress of a "cause, and even in the Appellate Court," and after assigning the reasons upon which the motion was refused. Adds

"We do not express this opinion without some hesitation, but "our best judgment is that it will receive the highest sanction "should the case go to the Supreme Court. * * *

"We would follow rather the example of Judge Storey, the "great light of equity jurisprudence, and *strain a point* in favor "of the constitutional right of citizens of the several States to "sue the citizens of other States in the Courts of the United "States. * * * * * *

"We shall, therefore, overrule the objection on account of want "of parties, and continue the case for answer. It is no small "satisfaction to know that any error we may now fall into, will "be corrected by a higher court." *Law Times, Vol. 11, p. 116.*

As appears by the record, the demurrer was also overruled; (*Transcript, folio 105, 106*;) and on the 3d July, Daniel Horlbeck, who had been appointed examiner, by order of the District Judge, proceded to take testimony.

TESTIMONY.

The only testimony, as appears by the record, which was taken in the cause, is by William McBurney, A. S. Johnston and William Whaley (*Transcript Record, folio 107 to 115*) upon this testimony, pleadings and argument, or upon the argument and pleadings only as stated in the decree his Honor Judge Bond, on the 2d day of May, 1872, made his decree upon the merits, and thereby adjudged:

CIRCUIT COURT DECREE.

1. That the surrender of the bonds of Elias N. Ball by Robertson, the executor, and the satisfaction of the mortgage of Dean Hall, were done in breach of his duty as trustee, and are null and void. That the obligations are not discharged. That the mortgage of "Dean Hall," is a valid and subsisting mortgage, and that complainant is entitled to the bonds and to enforce the mortgage as a security for the same.

2. That as to William McBurney, he do surrender any of the bonds of E. N. Ball in his possession, and the mortgage on or before a day named.

3. That the clerk do cancel upon the record thereof, the satisfaction of the mortgage, and that the executor, Robertson, by his assignment, transfer to complainant the right to collect the same or foreclose the mortgage.

4. That the sum of $31,000 is due as principal on the said bonds secured by the mortgage of "Dean Hall."

5. That if this debt and interest be not paid on or before 1st August, 1872, the said plantation, "Dean Hall," be sold under foreclosure.

6. That if complainant becomes the purchaser, she be allowed to set off her claim herein established, as a lien on "Dean Hall."

7. That the defendants pay the costs in proportion to be fixed by the clerk.

From this decree an appeal was claimed and allowed 14th May, 1872. Afterwards, the supplementary record as it is called, containing evidence said to have been in the cause, or alluded to in the argument was allowed to be added to the record by the District Judge out of term time of the Circuit Court, and when that court was not in session. To which this appellant strenuously objected, but was overruled, and the certified transcript of the record was allowed to be supplemented as appears therein.

ASSIGNMENT OF ERRORS.

I. AS TO PRACTICE AND PLEADING.

1. That the District Judge erred in allowing the Clerk to accept as security for costs the personal obligations of a person beyond its jurisdiction.

2. That the Circuit Court erred in allowing the complainant to withdraw the original bill filed 11th August, 1866, from the file, and to substitute that of 14th December, 1866, without notice.

3. That the Circuit Court erred in not hearing the demurrer to the original bill.

4. That the Circuit Court errred in requiring the defendants to answer the substituted bill of 14th December, 1866, under subpœna issued upon the original bill 11th August, 1866.

5. That the Circuit Court erred in not dismissing both bills as *multifarious.*

6. That the Circuit Court erred in overruling the objection taken by appellant, in his answer, for want of parties.

7. That the District Judge had no authority to order an amendment and addition to the transcript of the record after final decree therein and adjournment of the Circuit Court.

II. AS TO THE MERITS.

1. The Circuit Court erred in adjudging and decreeing that the surrender by the defendant, Alexander Robertson, of the bonds of Elias N. Ball, and satisfaction of the mortgage of "Dean Hall," to secure the said bonds, were done in breach of his duty, and are null and void, and that the mortgage on "Dean Hall" plantation, is a valid and subsisting mortgage on the said plantation in the hands of the purchaser thereof; and that the complainant is entitled to enforce the mortgage as security of the same.

2. The Circuit Court erred in holding that the said Alexander Robertson held the said bonds and mortgage as trustee, and not as executor, under the will of William A. Carson.

3. The Circuit Court erred in directing that the satisfaction of the said mortgage be cancelled, the mortgage foreclosed, and the plantation sold before the account made by the executors which the decree directs to be taken.

4. That under the circumstances the appellant, William McBurney, ought not, in any event, to be subjected to costs.

POINTS AND AUTHORITIES.

1. AS TO PRACTICE AND PLEADING.

1. Complainant had no right to take from file the original bill of the 11th August, 1866, and to substitute therefor that of 14th December, 1866, without an order of Court granted after notice.

Rule 3, U. S. Cir. Ct. Equity.

2. The demurrer to the original Bill should have been heard.

3. Defendent should not have been required to answer the the substituted bill 14th December, 1866, under subpœna issued upon the original bill 11th August, 1866.

4. Both bills are objectionable as multifarious, "being the "demand of several matters of a distinct and independent na- "ture against several defendants in the same bill, and thus "could be objected to at the hearing under the answer."

Story Equity Pleading, §75, 271, 274, 539.

Adams Equity, pp. 309, 310, 331, 333.

West vs. Randall, 2 Mason Rep. pp. 200 and 201.

5. Both bills are objectionable for want of parties.

Northern Indianna R. R. vs. Michigan Central R. R. Company, 15 How., 233, *Coiron vs. Millaudon*, 19 How., 113.

7. The District Judge had no authority to order the amendment and addition to the transcript of the record after the adjournment of the Circuit Court.

6. That the District Judge erred in allowing the Clerk to accept as security for costs, the personal obligation of a person beyond its jurisdiction.

II. AS TO THE MERITS.

1. That the defendant, William McBurney, was a purchaser for valuable consideration. *Orchard vs. Hume*, 1 Wallace, p. 73 at 7s; *Thorington vs. Smith*, 8 Wallace, p. 1; *Delmas vs. Insurance Company*, 14 Wallace, p. 661; *Planters Bank vs. Union Bank*, 16 Wallace, p. 483.

2. That the defendant, William McBurney, had no notice of any wrong doing in fact, and there were no circumstances requiring any inquiry. For the fact that the payment was made to one of two Executors, and the satisfaction by him alone did not affect Mr. McBurney with any notice of breach of trust.

a. The will directed a conversion out and out, that is a sale for payment of debts and investment in stocks or public or private securities.

See cases of conversion reviewed in *Bogert vs. Hertell*, 4 Hill, 492, by Chief Justice Nelson. *Stroughill vs. Anstey, 1 DeGex., M. & G., at pp. 652–653; Charlton vs. Dunham, Eng. L. Reports, 4 Chan. App. 433.*

b. One Executor was fully authorized to receive payment, and release or satisfy. *2 Williams' Executors*, and authorities there cited. Sir Thomas Plumer, V. C., in *Simpson vs. Gutheridge, 1 Mad. Chan. Reps. 616—Am. Ed. 330-331 on 4th Exception*; *Charlton vs. Durham, Eng. Law Reps. 4 Ch. App. 433.*

c. The lapse of time from the testator's death did not affect the defendant, McBurney, with notice, as the sale was to pay debts. *Stroughill vs. Anstey, 1 DeGex., M. & G., at* p. *650.* Ld. Chan. reviewing the case of *Forbes vs. Peacock. Charlton vs Durham, Supra.*

d. The notice necessary to charge one dealing with an Executor must be that the Executor intends to commit a fraud. *Story Eq., §§ 422-423; Laurens vs. Lucas, 6 Rich., 217; Long vs. Fallon, 19 How., 125.*

3. Bill alleges assignment by her sons to complainant of interests under their father's will shortly before suit commenced, but it does not state any consideration, and no consideration was in fact paid. *Fonbl. p. 348. Jeffreys vs. Jeffreys,* 1 Craig & Phillips, 141.

Sir Wm. Grant, in Cholmondelly vs. Clinton, 2 Merv., 359.

Sewell vs. Moxsy, 2 Sim. N. S., p. 189; 42 Eng. Chan.

Edward McCrady Jun
for appellants

Supreme Court of United States.

DECEMBER TERM, 1873.

ALEXANDER ROBERTSON, JOHN FREER BLACKLOCK, WILLIAM MCBURNEY AND WM. I. BALL, *Appellants*,

v.

CAROLINE CARSON, *Respondent.*

Argument of Edward McCrady, Junior, on behalf of William McBurney one of the appellants.

The late William A. Carson of South Carolina, being possessed of a valuable estate, real and personal, consisting principally of a plantation, known as "Dean Hall," and a number of negroes thereon, by his last will and testament, after making several bequests of personal property, of which it is only necessary for us to notice that of his stock of wines, his plate and silver ware which he bequeathed to his two sons jointly; directed his executors, or such one as might qualify thereon to sell all his estate, real and personal, as soon after his decease, and upon such terms as they or he might deem most judicious. (*Transcript Record, pp.* 2 *and* 7.) The testator died 17 August, 1856, (*Transcript Record. p.* 2, f. 5.)

His will bears date, 11 March, 1854, (*Trans*: *Record, p.* f. 2, *and p.* 8, f. 21,) and was proved before the proper officer of record, 18 August, 1856, when Alexander

Robertson and John F. Blacklock, named as executors, qualified thereon. (*Ibid.*)

The testator left a widow who is the complainant in this case, and two sons who are named as defendants, in both the bills filed, (*Trans: Record, p.* 6, f. 16, *and p.* 25, f. 62,) but who have not been served with process, nor voluntarily appeared.

By the terms of the will the proceeds of sale of the testator's estate, after the payment of debts, was to be divided into three parts and held by his executors or qualified executors in trust to pay the interest arising from one-third to his wife, the complainant, to pay the interest arising from another third thereof to the maintenance, education and support of his son William Carson, during his minority and upon his attaining the age of twenty-one to pay to him the capital and accumulation, and—to pay the interest and capital upon another third part for and to his son James P. Carson, in like manner. (*Trans: Record, p.* 8, ff. 20, 21.)

The executors proceeded, soon after the death of the testator pursuant, to the directions of the will, to sell the plantation. "Dean Hall," and thereupon duly conveyed it to one Elias Nonus Ball, for the sum of $50,000, of which $15,000 were paid in cash, and the balance by his bonds secured by a mortgage of the premises to them *as executors*, (*Trans. Record, p.* 27, f 68, *p.* 35, f. 87, *and sup. Trans. Record, p.* 51, f. 128.) The purchaser, E. N. Ball, entered into possession of "Dean Hall," and held it until the month of March, 1863, when he contracted with Hyatt, McBurney & Co., of Charleston, S. C., to sell the plantation at the price of $100,000, (*Trans. Record, p.* 30, f. 75.)

This contract was advised and approved of and urged by the legal adviser of the executors, the late James L. Peti-

grn, who was also the father of the complainant, the widow of the testator; and the grandfather of the defendants, William and James P. Carson. He urged the sale for the purpose of paying off the still unsatisfied mortgage debt for the purchase money, then greatly increased by the accumulated interest in arrear, and to provide the means of support of one of the defendants, James P. Carson, then still a minor residing in South Carolina. (*Trans*: *Record*, *p.* 45, f. 112.)

Pursuant to this contract, Hyatt, McBurney & Co., as soon as the title had been examined and approved by their solicitor's paid on account of the purchase money more than $80,000, with which Ball paid off his bonds to the executors, and the executors satisfied the mortgage, and on the 7th May, 1863, Ball conveyed "Dean Hall," to the defendants William McBurney and Alfred L. Gillespie, two partners of the said Hyatt, McBurney & Co., to such uses as they or the survivor of them should appoint, and until such appointment to the use of Edmund Hyatt, William Hasseltine, Thomas R. McGahan, and the said William McBurney and Alfred Gillespie, partners, as Hyatt, McBurney & Co., according to their respective interest in the partnership. (*Trans. Record*, *pp.* 28, 29 *& p.* 43, f. 107.)

Edmund Hyatt some time after released his interest in "Dean Hall" by deed bearing date 8th May, 1863, and duly recorded the 15th of the same month, and on the last named day Hyatt, retiring from the partnership, McBurney and Gillespie appointed Dean Hall to his use to secure a bond of the remaining partners to him for $40,000, given for the purchase of his interest in the partnership, which mortgage is duly recorded. Hyatt was, at the time of the filing of the bill, and now is, a citizen of New York. Hasseltine was domiciled at Liverpool, Eng-

land. Gillespie was then in Charleston, now in Tennessee, and McGahan then, as now, a citizen of South Carolina. None of them are made parties to the bill. Ball, the purchaser, was at the time of filing the bill, a citizen of New Jersey.

The purchase money was paid by checks on the Bank of South Carolina, at Charleston, at a time when Confederate treasury notes were the only currency in circulation in Charleston. The purchase and payment by Hyatt, McBurney & Co. were in effect in that currency. (*Trans: Record*, p. 43.)

These are the principal facts of the case as far as the appellant is properly connected with it. But the allegations of the bills, original and substituted have, here introduced, are matters with which the appellant, McBurney, should in no wise be concerned, and yet in which he finds himself involved in these pleadings.

The executors at the time they sold the plantation to Ball, sold to him, also, the negroes upon it belonging to the estate of the testator, and to secure the payment of the purchase money required of Ball not only a mortgage of the negroes but a guarantor upon his bond. In compliance with these terms William J. Ball became jointly bound with E. N. Ball for the payment of the credit portion of the purchase money of the negroes. (*See Bills and answer of Ball.*)

The property thus having been conveyed to William McBurney and Alfred L. Gillespie they remained in unquestioned possession until August, 1866, when the original bill in this case was filed and subpœna served upon the appellant, McBurney. The prayer of this bill was for process against Alexander Robertson, John Freer Blacklock, Elias Nonus Ball, William Ball, William McBurney, William Carson, and James P. Carson. Of these Mr.

McBurney was served, acceptance of service was given for William J. Ball, and the subpœna as to the others returned, N. E. I. (*Trans. Record, p.* 12, *f.* 31.)

On the 3d September following an order was entered by the District Judge staying proceedings until the complainant should give security for costs in such amount as the commissioner, acting as master, should deem sufficient. (*Trans. Record, p.* 13, *f.* 32.) Under this order the complainant offered as his security Rawlins Lowndes, a resident of New York. The defendants objected to accept the personal undertaking of one beyond the jurisdiction of the court as security, but it was accepted by the commissioner and, after opposition by the defendants, held sufficient by the District Judge. (*Trans. Record, p.* 25, *f.* 63.)

Pending the question of the security for costs, the complainant, without leave of court or notice to the defendants, withdrew from the file the original bill and substituted another. The new bill was thus endorsed: "Filed 11th August, 1866, substituted for original bill of "this date on the 14th December, 1866." (*Trans. Record, p.* 25, *f.* 62.)

On the 4th March, 1867, the defendant, William McBurney, filed a general demurrer to the original bill, and on the same day filed his answer to the substituted bill, with the following endorsement:

"This answer is filed with a protest that the complainant had no right or authority to substitute the bill of 14th December, 1866, in the place of the bill filed on August 11, 1866, the said bill is not properly on file, and no subpœna thereon has been served. This defendant claims that if it should be so ruled this defendant shall have leave to withdraw this answer from file." (*Trans. Record, pp.* 34-40.)

On the 18th May, 1868, the appellant moved to take the substituted bill of 14th December from the file of the court, which motion was refused, and it was ordered

that his answer thereto stand as his answer in the cause. (*Trans. Record, pp.* 31-40.)

The original bill, filed August 11, 1866, and the substituted bill, filed December 14, 1866, were both brought by the testator's widow in her own right and as assignee of the rights of her two sons, and the scope and purpose of both as to the defendant, William McBurney, though differing essentially in many particulars, is to set aside his purchase and re-establish the mortgage given by Ball to the executors, upon the ground that he, McBurney, paid no valuable consideration for his purchase; that the pretended payment of his bond by Ball, the mortgagor and purchaser from the executors, and the release and satisfaction of the mortgage was procured by him without valuable consideration and was a breach of their trust by the executors. That he, William McBurney, aided and procured the executors to commit the breach of trust, and with full knowledge of the same, became seised and possessed of "Dean Hall" without any valuable consideration passing from him to Ball, or from Ball to the executors, and that he should, in equity, be declared to hold the premises for the benefit of the complainant.

DEFENCES.

The defences set up and insisted upon by the defendant, William McBurney, before the court below, and now again most earnestly urged before this Court of last resort are two fold—*first* as to pleading and practice, and *second* upon the merits.

First. That the complainant had no right to take from the file the original bill and substitute another without notice; and without leave of the court obtained; and that the defendants should not have been required to answer

the substituted bill under supœna issued upon the original. That the demurrer to the original bill should have been heard and decided. That both bills are objectionable as *multifarious*, and both objectionable for a want of parties. And that the District Judge erred in allowing the clerk to accept, as security for costs, the personal obligation of one beyond its jurisdiction. That the District Judge had no authority to order the amendment and addition to the record after the adjournment of the Circuit Court.

Second. That the defendant, William McBurney, together with his partners, was a purchaser for valuable consideration. That he had no notice of any wrong doing in fact, and there were no circumstances requiring inquiry. That the complainant, so far as she is a volunteer, has no equity which the court will enforce.

1—AS TO PRACTICE AND PLEADING.

1. The appellant, William McBurney, appeals to this court, that the complainant had no right to take from file the original bill, and substitute another therefor.

The 3d rule of practice for the courts of equity for the United States, it is true allows full powers and discretion to any judge of the circuit court, (including the district judge, it may be) to speed a cause at chambers or on the rule days, and that the 28th rule is liberal in its provisions as to amendments, but none of the provisions of these rules were complied with in this instance. The cause had so far proceeded that an order had been made in it, on the motion of this appellant, and the other defendants, and pending further proceedings on that order, the bill, upon which a subpœna had been issued, is *withdrawn*, not amended, and an essentially different one substituted. We find provision in

the rules for amendment, but none for substitution.

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2. He appeals to it that his demurrer to the original bill should have been heard and his case decided thereon; and

3. He appeals to it, that he should not have been required to answer the new bill under the subpœna to the old. That the complainant should, at least, have discontinued her original suit and commenced another, if she found that she had mistaken or misrepresented her case in the first. But this she must have done upon application and hearing, and upon such terms as the court might impose.

But beyond these improprieties in practice, both bills, original and substituted, are alike objectionable in two substantial particulars. They are both *multifarious* and both defective for *want of proper parties*.

4. They are both clearly multifarious. In Story's Equity Pleadings, we read:

"§ 271. In the next place a bill should not be what is technically termed multifarious, for if it so, it is demurrable, and may be dismissed by the court of its accord, even if not objected to by the defendant. By multifariousness in a bill, *is* meant the improperly joining in one bill distinct and independant matters, and thereby confounding them; as for example the uniting in one bill of several matters, perfectly distinct and unconnected against one defendant, or the demand of several matters of a distinct and independent nature against several defendants in the same bill."

"§ 274. For the same reason where a bill by a creditor sought an account against an executor and trustee of the testator's estate, and also to set aside a sale made by an executor and trustee to a purchaser who was made a party to the bill, it was held demurrable for multifariousness, for the purchaser had nothing to do with the general settlement of the accounts of the estate, and ought not to have been involved in any litigation respecting it."

See, also, Adam's Equity, § 309, 310, 331 and 333.

In the bills in this case a legatee seeks an account against executors, whom she claims to be also trustees, and to set up a mortgage satisfied by the executors against

the purchasers

one of whom only she has made a party to her suit. These bills present a much stronger case of multifariousness than that mentioned in Story's Eq. Pl., § 274, just quoted.

The orignal bill prays (1) an account from the executors (2) the foreclosure of the mortgage of "Dean Hall" if held by the executors (3) or, if released a decree against Elias N. Ball, the mortgagor, for the purchase money, (4) if he was unable to pay, decree that the appellant hold the mortgaged lands as trustee of the complainant; and (5) a decree against William Ball for the payment of the bonds for the purchase of the negroes.

The substituted bill prays (1) a discovery against the executors, what disposition they have made of certain wines and silver-plate, (2) discovery as to the time and authority of entry of satisfaction on the mortgage of "Dean Hall," if released, (3) if not released, injunction against executors from releasing, (4) discovery whether they have refused an account, (5) decree to account, (6) decree against Elias N. Ball to deliver up bonds for purchase money and mortgage deed securing them, (7) decree against William Ball to deliver up bonds upon which he was an obligor, (8) decree that "Dean Hall" is subject to the mortgage, (9) foreclosure of the mortgage, and (10) injunction against appellant, William McBurney, from committing waste.

What possible connection can be suggested between the discovery as to the wines and plate sought from the executors, and the injunction from committing waste, asked against the appellant? What connection is there between the discovery sought against the executors as to the satisfaction of the Dean Hall mortgage and decree, asked against William Ball for the re-delivery of his bonds? The bill seeks to combine the equitable remedies of discovery, account and foreclosure, with actions

at law of debt on bond, and trover. They are multifarious, for they combine not only different and distinct subject matters, but independent matters in which the different parties have no relation to each other.

5. The bills are incurably defective for the want of essential parties. The complainant while multifarious in her charges and prayers, has omitted to bring before the court not only the proper but the essential parties to answer those portions of the bills which relate to the appellant.

We approach this subject with the respect due the opinion of the late Chief Justice who overruled the objection as to parties, the only question in the case he heard, but we are encouraged to press the point upon the court, not only by the strong authority in our favor, but from the expressions of hesitation uttered by his honor in delivering his opinion, and the satisfaction he expressed to know that his decision would not be final but would be reconsidered by this court.

The general rule is thus laid down by Story Eq. Juris. § 72.

"And hence, also, it is a general rule in equity, subject to certain exceptions which will hereafter be noticed, that all persons materially interested, either legally or beneficially in the subject matter of a suit, are to be made parties to it, either as plaintiffs or as defendants however numerous they may be, so that there may be a completed decree which shall bind them all." And § 75.

"If the proper parties are not made, the defendant may either demur to the bill or take the objection by way of plea or answer or * * * * * * when the cause comes on to a hearing he may object that the proper parties are wanting, or the court itself may state the objection and refuse to proceed to make a decree, or if a decree is made it may for this very defect be reversed on a rehearing, or on an appeal," &c.

The question of proper and essential parties to a proceeding in equity, under the general principles in connection with the restricted jurisdiction of the Circuit Courts, has been several times before this court.

In the early case of *Russell* v. *Clark's Ex'or*, 7 *Cranch*, 69, at p. 98, Chf. J., Marshall says:

"The incapacity imposed on the Circuit Courts to proceed against any person residing within the United States, but not within the district for which the court may be holden, would certainly justify them in dispensing with parties merely formal. Perhaps in cases where the real merits of the cause may be determined without essentially affecting the interest of absent persons, it may be the duty of the court to decree as between the parties before them. But in this case, the assignees of Robert Murray are so essential to the merits of the question, and may be so much affected by the decree, that the court cannot proceed to a final decision of the cause till they are parties. They may contest the validity of all the deeds under which both parties claim, and assert in themselves for the benefit of the creditors generally, a right, the whole fund * * *

The prayers for subpœna in the two bills are the same, viz: to Alexander Robertson, John Freer Blacklock Elias Nonus Ball, William McBurney, William Ball, William Carson, and James P. Carson, and to these subpœnas issued. But there are other persons who have a more direct and important interest who have not even been named in the pleadings—some of them probably, because the complainant feared that if necessary as parties, the jurisdiction in the case would be ousted, but others in reach of the court, which has decided upon their interest without calling upon them to answer.

1 Saun: Uses & Trusts 3. 93. 2 Cruise 349. Tit. 12 Ch. 5 a.

The conveyance of "Dean Hall" by E. N. Ball, it will be observed, is to William McBurney *and Alfred L. Gillespie and the survivor of them, and the heirs and assigns of such survivor forever, but to and for such uses, intents and purposes* as they, the said William McBurney and Alfred L. Gillespie or the survivior of them, shall, by any deed in writing duly signed by them or him in the presence of two witnesses from time to time, limit, direct and appoint, and until such limitation, direction and appointment, to the only proper use and behoof of Edmund Hyatt, William Hasseltine, Thomas R. McGahan, and the said William McBurney and Alfred L. Gillespie, their respective heirs and assigns in such shares, interest and proportion as they were then entitled to in the capital and profits of the co-partnership of Hyatt, McBurney & Co.

Here then, besides the appellant, William McBurney, thus singled out by the complainant, are four persons interested in the title on record to the plantation "Dean Hall" no one of whom is bound by the decree in this case. Should this court affirm the decree an action may be commenced the next day by any one of these parties in

a State Court for the recovery of possession, or even in the United States, by the two who are now citizens of other States, and upon appeal this court would find it hard to turn away from them, inasmuch as the only person interested in any way with them, has called the complainant's attention to the fact of their interest and asked that they be made parties which suggestion has persistently been declined.

Nor only so. It will be observed that it is distinctly set out in the answer of this appellant that he and Alfred L. Gillespie, to whom the conveyance was made, in a settlement of the partnership affairs, a few days after the purchase and execution of the conveyance to them, in pursuance of their power under the conveyance from Ball declared limited, and appointed the plantation to the use of Edmund Hyatt as a mortgage to secure a bond given by the other parties for the purchase of the interest of the said Edmund Hyatt in the partnership. Could the United States' Court which has insisted upon proceeding to consider and adjudicate upon property in which he is so much interested, close its doors to him when Hyatt comes invoking its process to foreclose the mortgage which he thus holds? Does the decree we are now considering, in any wise bind or concern him? Should he prove more successful in representing his own right to "Dean Hall," by way of mortgage, than we have been in speaking for the appellant, William McBurney, would the decree now before the court preclude him?

If Mr. Hyatt can yet bring suit to foreclose the mortgage executed to him by way of appointment, under the powers in the deed from Ball to McBurney and Gillespie, the decree in this case does equity by half, if at all, and violates one principle of equity. If, on the other hand,

Mr. Hyatt is precluded by the decree from asserting his own rights in his own way, he should have been made a party, and a proceeding without him, violates another principle—the principle for which we are now contending.

It will be observed that the late Chief Justice, in overruling the objection for want of parties, expressed himself with much hesitation, and avowedly "*strained a point*" to allow the jurisdiction, looking to the time when the case should reach this court for a fuller consideration.

It will be observed that he overlooked the point which we then made and now press. He says:

"It is objected, in the first place, that the partners of the defendant, McBurney, are indispensable parties. But it is plain upon the bill and answer that in all the transactions which form the subject of litigation, Mr. McBurney represented the firm, and we see no good reason why he may not be held to represent them in this suit. Most of the partners can come in and become parties to the bill if they desire to do so. If they do not, it will be because they think their interest already adequately represented."—*The Law Times*, vol. ii, p. 116.

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The Chief Justice certainly overlooked the points we urge, in regard to Hyatt, Gillespie, Hasseltine, and McGahan. The conveyance to McBurney and Gillespie, was to them as feoffees to uses. As feoffees, their right was only that, sometimes call *scintilla juris*, the spark of right sufficient but necessary to serve and support such uses as might be declared, and which spark or portion of the fee would remain in the survivor, in case of the death of either. But they with Hasseltine and McGahan were joint tenants, at the time of the filing of the bill, under the uses declared in the deed, until the declaration and appointment of the feoffees made, as provided by the deed, and each had a legal estate in the land not as partners, but as joint tenants, and hold the same until de-

feated by such appointment. They surely should be made parties—as their title was on record.

Mr. Hyatt had released his interest in the land immediately after the purchase, and the feoffees to uses, had appointed a use of "Dean Hall" to secure the bond of the other partners of the firm just named, given to secure the price of the purchase of his interest in the firm.

Mr. Hyatt is not a partner to be represented by Mr. McBurney, if one partner can, even in equity, represent his co-partners only *some* of whom could come in if they desired. The co-partnership of which Mr. Hyatt was a member expired on the 31st May, 1863, and he then sold his interest in the firm to the other partners and retired from busines. (*Trans. Record*, p. 29, f. 71.) His interest in the plantation, "Dean Hall," is only by the mortgage upon which he holds under the appointment from the feoffees to uses, to secure the bond of his late co-partners. The appellant, William McBurney, one of the mortgagors, surely could not represent him.

The bills are founded upon the great mistake that the appellant bought the property, paid for the property and holds the property. He no more bought the property than William Whaley sold it. The one negotiated for the vendors and the other for the vendees. (*Trans. Record*, p. 45, f. 112.)

But there is another indispensable party, one who should be the principal in any suit by Mrs. Carson upon this subject, and that is Elias N. Ball, the purchaser from the executors of the testator, and the vendor to the feoffees, McBurney and Gillespie. In regard to him the Chief Justice said that he, it seems, has gone into bankruptcy, and that under the circumstances he did not perceive that he is a necessary party.

It will be observed that the second bill was filed in December, 1866, and as the bankrupt law was not enacted until March, 1867, it is clear that this reason did not exist when either the original or substituted bill was filed. The bankruptcy is certainly *prima facie* evidence of his inability to pay all of his debts, but not of his inability to pay any portion of them. It is in evidence that the purchasers had paid Ball in checks on the Bank of South Carolina, which checks were payable in Confederate currency; but there is not a tittle of evidence that the bonds were paid by Ball in Confederate currency, except the answer of Alexander Robertson, which is no evidence either against Ball or the appellant. Ball may have paid Robertson gold or other unquestioned money to release the mortgage, for all that the record shows. We shall see that the purchasers paid him an amount sufficient to have paid his bonds secured on "Dean Hall." But all these matters Ball should have been made a party to answer.

The decree is, that the sum of $31,000 is due on the bond of Ball to the executors, with interest from 23d April, 1863; and it is ordered and decreed that if the same be not paid on or before the first of August, 1872, that the marshal sell the plantation. This is in effect a decree that if Ball, a person not before the court, shall not do a specific thing by a certain time, that another who happens to be before the court shall suffer.

Again, the record shows that there are still other parties in interest, ~~and~~ who should be heard ~~in~~, and bound by, any decree in this cause who have not been made parties.

As the record now stands, no decree upon it in favor of the complainant can end the litigation. Hyatt is free to bring his bill to foreclose his mortgage of "Dean Hall" and Hasseltine, Gillespie and McGahan free to bring

their action in ejectment against any person who might purchase at the sale prayed for; unless bound by the decree rendered, (*Trans: Record, p.* 47, *f.* 117.) "that the equity of redemption of Hyatt, Mc Burney & Co., in the said Dean Hall plantation, is forever barred and foreclosed" in which their recognized right is adjudicated without their having been heard.

Prior to the practice act of 1872, the United States Courts "strained points" to entertain jurisdiction in equity which was so much restricted by the territorial limit of their jurisdiction to the district for which each sat. That act has now extended that jurisdiction to a great extent, so that at this time there is but one person connected with the case which may not be made a party, and he is Edmund Hyatt. And he cannot be because it appears that the complainant and himself are both citizens of same state, and hence do not come within the Constitutional provision as to jurisdiction.

Since the act of 1872, therefore, the desire to stretch the jurisdiction of the courts in this respect has lost much of its force, and the few and exceptional cases like that of Mr. Hyatt will not afford sufficient cause to *strain* the rule; but the United States Courts will rather remit them to the State Courts, where all parties may be compelled to attend.

II.

AS TO THE MERITS.

We come now to discuss the merits of the case as if all the parties were before the court upon a record properly presenting the question in which the appellant William McBurny, is interested, and our first proposition upon this branch of the subject, is:

1. *That the defendant, William McBurney, was a purchaser for valuable consideration.*

If there were no dates to the record, misshapen as it is, the court would find no difficulty in fixing the period in which this cause was commenced, asthe last of revolution, the period when it was supposed by some that law would no longer have sway, but that passion and prejudice would reach even this high tribunal. Hence, the formal allegations of the bill:

"And your oratrix showeth that she is informed and believes that the said William McBurney, at some time in April of the year of our Lord one thousand eight hundred and sixty-three (1863) being desirous of purchasing from the said Elias Nonus Ball. the said 'Dean Hall' *for certain illegal promissory notes issued in violation of the Constitution of the United States*, advanced a large number of such notes to the said Elias Bonus Ball to enable him to obtain by means of the said notes from the said Alexander Robertson and John Freer Blacklock a release of the aforesaid bond, and satisfaction of the aforesaid morgage of 'Dean Hall' securing the same. that thereupon the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid. accepted the said notes in payment of the said bond of the said Elias Nonus Ball given by him to the said Alexander Robertson and John Freer Blacklock to secure the purchase money of the said 'Dean Hall' that the said Alexander Robertson, and John Freer Blacklock thereupon released the said bond and entereed satisfaction upon the aforesaid mortgage of 'Dean Hall' securing the said bond in consideration of the said illegal notes, and thereupon the said Elias Nonus Ball. in consideration of the said illegal notes advanced or paid to him, the said Dean Hall plantation, did convey to the said William McBurney."

These solemn formal allegations in this bill in equity so much resembling the language of an indictment, have lost much of their point since the case of *Thorington* v. *Smith*, 8 *Wallace*, *p.* 1; *Delmas* v. *Insurance Co.*, 14 *Wallace*, *p.* 661; *and Planter's Bank*, 16 *Wallace*, *p.* 383.

The case of *Thorington* v. *Smith* is decisive upon the question of valuable consideration. This court in that case enforced a contract made upon the consideration of Confederate Treasury notes, and required the payment of their estimated value in United States currency; and in the case of *Dean Yonnell's administrator* reported ~~in a note to~~ *Thorington* v. *Smith*, held that upon the same

principle, the fact that the land was sold for Confederate notes did not in the absence of all averment that the complainant was induced to take them by fraudulent misrepresentation (of the decedent) afford ground for the interposition of a court of equity.

In the case of *Delmas* v. *Insurance Company* the court went further and held that the notes of the Confederate States in ordinary use as money, during the rebellion might constitute a valid consideration for a contract, and that a provision in the constitution of a State subsequently adopted declaring such contracts void was an impairing of the obligation of such contract within the meaning of such constitution.

And at the last term this court held in *Planter's Bank* v. *Union Bank* that a promise to pay in Confederate notes in consideration of the receipts of such notes, and of Drafts payable by them is neither a *nudum pactum* nor an illegal contract; and that though an illegal contract will not be enforced by courts, yet it is the doctrine of this court that where such a contract has been executed by the parties themselves, and an illegal object has been accomplished, the money or thing which was the price of it may be a legal consideration between the parties for a promise express or implied, and that the court will not unravel the transaction to discover its origin.

If the court unravel the transaction in regard to the purchase of "Dean Hall"—it will soon appear, instead of the conspiracy implied, to have been a simple business transaction in which Hyatt, McBurney & Co., through the medium of bank checks then payable in Confederate currency, changed an investment in a large amount of cotton to an investment in real estate.

The State of South Carolina so far from declaring contracts based upon Confederate currency illegal has by act of the General Assembly of 1869, definitely established the fact that the purchasers in this case paid full value for the plantation.

In the Revised Statutes S. C. Chap. LV, p. 310, it is enacted.

"Section 1. That the value of all debts and obligations whether under seal or not under seal created or contracted in Confederate State notes as a basis of value issued by the so-called Confederate Government or on. or by any bills bonds or notes assimilated or made equivalent in value to Confederate States notes by any law or custom of trade shall be determined by the value of the said Confederate State notes in the lawful money of the United States at the time such debts or obligations were created or contracted.

"Section 2. That the value of one dollar of lawful money of the United States in said Confederate States notes is declared as follows:

"1. During January and February, 1861, one dollar of lawful money was equal to & ct & ct

* * * * * *

"26. On the first day of April. 1863, one dollar of lawful money was equal to three dollars and fifty cents of Confederate State notes, and from day to day thereafter regularly increased in value until the thirtieth day of April, 1863, when one dollar of lawful money was equal to three dollars and eighty cents of Confederate State notes.

The contract it will be recollected was made some time in March, and completed, and the money paid on the 23 April, 1863, taking therefore, the basis established by the legislature of South Carolina, at $3.50, for the 1 April, and $3.80, for 30th, we will put the value of one dollar in U. S. currency on the 23 April at $3.75, in Confederate currency. The decree fixes that the sum of $31,000, is due as principal on the bonds secured by mortgage of "Dean Hall," with interest from the 23 April, 1863. Thirty-one thousand dollars in U. S. currency was worth as established by the act just cited at $3,75 to one—$116,250. The purchasers then actually paid at the least the equivalent of $26,666, in U. S. currency at the time, out of an amount due on the bonds fixed by de-

cree, at $31,000, leaving a difference of only $4,334, in U. S. currency between the amount due on the bonds secured by the mortgage and that actually paid—a difference fully accounted for by the difference in value of the place in a time of prosperity and in a time of adversity. He who asks equity must do equity. The executors received from the purchasers the equivalent of $26,666 in lawful money, and for that conveyed to them the plantation. If the complainant is disatisfied with the bargain they made it is easily remedied; the purchasers will gladly restore the land for the value they gave for it, aye! for the half of it. As is well known if the lands were sold to day they would not bring a third of the sum.

But in the case of *Mayer v. Mordecai*, quoted below, the Supreme Court of South Carolina, has assumed the value of Confederate notes as of that time as compared with United States currency at *three* to one which would make the sum paid by the purchasers, $ 33,333.33 against $ 31,000 now found due upon the bond as of that date; by which, the purchasers actually paid to Ball more than was due upon his bond to the executors.

2d. That the defendant William McBurney had no notice of any wrong doing in fact, and there were no circumstances requiring any inquiry. For the fact that the payment was made to one of the executors, and the satisfaction by him alone did not effect Mr. McBurney with any notice of breach of trust.

(a.) The will directed a conversion "out and out," that is, a sale and investment in stock or private securities.

In the case of *Bogert* v. *Hertell IV* Hill., *p.* 404 Chief Justice Nelson, says,

"The great question in the case is, whether the assignment of the bond and mortgage by Van Buren to Bogert had the effect to transfer the legal interest thereon or in other words whether one of the executors was competent to sell and transfer this item of the assets of the estate so as to give a complete title to the purchaser. The court below held, that notwithstanding the power given to sell and dispose of the real estate, and then in fact to convert the mass into money, yet after it had been converted and existed in the lands of the executors in the state and condition of personalty it was still to be regarded as land, subject to the rules and principle guiding the disposition of real estate, and that the executor as such having no control over the lands, (the power being limited strictly to the administrator of the personal estate,) the sale and assignment by Van Buren were wholly inoperative and void. The court below also held that even admitting the bond and mortgage to be a part of the personal assets of the estate, yet, inasmuch as these instuments were made to Van Buren and Whyckoff in their joint names though discribed as executors it was not competent for one of them to sell and transfer the legal title to the same."

"In respect to the first ground I think the fundemental error lies in a misapprehension of the true nature and character of the fund in the hands of the executors. It is said by the court below, to be an established rule in the doctrine of equitable conversion of real into personal estate: that were the devisor directs the conversion for a particular specified purpose and not absolutely for all intents and purposes or "out and out" as the phrase is, courts are bound still to regard the estate as land, and that no part of the mass thus converted as impressed upon it the character of personalty: but, I think the authorities demonstrate that where the devisor has directed or authorized the conversion of his real estate even for a particular special purpose, such as distribution, courts are bound so long as the purpose and object exist and continue to regard it as of that species of property into which it was directed to be converted; and to the extent and for the purpose declared, it is to be treated as money and not land. This will be found to be the uniform language of all the cases on the subject

And after a full review of all the cases, the late distinguished jurist concludes, (p. 507):

"Assuming that Van Buren, the executor, was competent to sell and assign the bond and mortgage, then there cannot be a doubt that Bogert acquired a complete title to the money due thereon, for it is admitted that he purchased, in good faith, and for full value advanced at the time. There is no pretence for the charge of collusion with the executor, or of knowledge on the part of Bogert that the executor intended to misapply the assets, or of fraud of any description. He paid the full face of the bond in cash on a purchase in the usual way and upon all the cases, assuming that one of the executors alone had proven to assign and transfer the interest in the securities. Bogert has established as perfect a right to the money thereby secured as if Van Buren had been owner in his own right."

In the case of *Stroughill* v. *Anstey*, (1 *De Gex, M. and G.*, at p. 652, Ld. Chan., St. Leonard's says:

"The case then comes to this, if authority is given to sell for the payment of debts and legacies and the purchaser knows that the debts are paid, is he bound to see to the application of the purchase money?—I apprehend not. In the case of *Jackson* v. *Kennel*, where it was contended that the rule did not apply because the debts had been paid before the sale took place, I held that the rule had reference to the death of the testator and therefore, that even supposing that the debts were paid before the sale took place, and that the legacies alone remained as a charge that such circumstance could not stay the general rule. * * The case must stand upon one or two grounds, either that there are no debts within the knowledge of the purchaser, and then it is indifferent whether there were no debts at the death of the testator nor no debts at the time of the purchase. or, which is more satisfactory and open to no ambiguity on the ground that when a testator, by his will, charges his estate with debts and legacies, he shows that he means to entrust his trustee with the power of receiving the money, anticipating that there will be debts, and thus providing for the payment of them. It is by implication a declaration by the testator that he intends to entrust the trustee with the receipt and application of the money, and not to throw any obligation at all upon the purchaser or mortgagee; that intention does not cease because there are no debts, it remains just as much if there are no debts as if there are debts, because the power arises from the circumstance that the debts are provided for, there being in the very creation of the trust a clear indication amounting to a declaration by the testator that he means, and the nature of the trust shows that he means, that the trustees are alone to receive the money and apply it. In that way all the cases are reconcileable and all stand upon one footing, namely, that if a trust be created for the payment of debts and legacies the purchaser or mortgagee shall in no case be bound to see to the application of the money raised. This would be a consistent rule on which any body would be able to act, authorized, too, by the words of the testator, and drawing none of those fine distinctions which embarresses courts and counsel and lead to litigations, and it is one to which I shall adhere as long as I sit in this court."

In the case of *Charlton* v. *Earl of Durham*, *Law Reports*, 4 *Chan. App.*, at p. 438, (which is a case remarkably similar to this in many particulars.) Lord Hatherly, L. C., says—

"The persons with whom the executors are dealing are not bound to know the state of the testator's assets and it may be many years before all his debts are paid and his estate wound up. There are good reasons why the receipt of one executor should suffice, as he may be called upon to pay debts, and this rule, therefore, prevails until you can fix the debtor with much more precise notice than we have here that the estate has been all administered." * * *

(*b.*) *One executor was fully authorized to receive payment and release or satisfy.*

2*d Williams*, *Executors* 810. "Co-executors, however

numerous, are regarded in law as one individual person, and by consequence the acts of any one of them in respect of the administration of the effects, are deemed to be the acts of all, for they have all a joint and entire authority over the whole property. Hence, a release of a debt by one of several executors is valid and shall bind the rest. So a grant or a surrender of the term by the executor shall be equally available. So the attornment of one shall be the attornment of the other." *See authorities there cited.* Sturm on Ecurts. 249. cites Strange and Clarke v Jenkins 2 Rich Eq: 319.341

In the case of *Simpson* v. *Gutteridge*, 1 *Madox Chan.*, 616 *Am. Ed.* 327, *at pp.* 330, 331, the fourth exception to the Master's Report was,

"Because the title to a term of 1,000 years, created by an indenture dated the 17 day of July, 1817, and stated to have been assigned to *Thomas Barnes* and *Isaac Hindly* by an indenture dated 6 February, 1779, upon trust to attend the inheritance, is not satisfactorily deduced, the last mentioned indenture purporting to be an assignment of the said term by *Walter Shirley* and John Lloyd the executors of Lady Francis Shirley, then deceased; whereas the said Walter did not execute the said indenture."

The Vice Chancellor, Sir Thomas Plumer, as to this exception observed:

"That where one of several joint-tenants, or tenants in common, executes a deed, it passes only the share of the party so executing, but several executors are considered only as one, and a gift surrender payment, release, or judgment conferred by one executor, is as effectual as if all of them had joined. In the *Dyer* it is said, if two executors have a term, and one grants to a stranger all that belongs to him, his whole term passes, inasmuch as each of them, as an entire authority and interest in his term as executor. But of other joint tenants of a term it is otherwise. So there is diversity. This doctrine has been constantly recognized each executor has an entire interest in this term. If any thing pass by the deed, it must have been the entirety of the term. The executor not being entitled in moiety or parts, what then is the effect of one executor only executing the deed? If one only executes it must be considered as his deed only, but the question what passes, must depend upon the words of the deed; upon what purports to convey. This deed purports to convey the entirely of the term, and therefore that passes. In *Touchstone* it is said, if there be divers grantors, obligors, &c., named in a deed and one of them only do seal this deed, there is a good as against him that doth seal, and void as to all the rest that do not seal. And if divers enter into covenants by a deed severally, and the seal of one of them is broken from the deed, in this case the deed is good still as to all

the rest, but void to him." Here each assignor had the entire interest and being a good deed, by Lloyd it passed the entire term.

The case of Charlton v. Earl of Durham above quoted, is identical with this case in all its essential particulars. The differences are entirely in our favor. Let us compare them.

Charlton v. Durham.	*Carson v. Robertson.*
"A testator gave the residue of his estate to his executors upon certain trust. Part of his estate consisted of a bond given by the trustees of a minor who came of age within a year after the death of the testator, and the executors then accepted his bond to them, jointly, in the place of the bond given by the trustees.	W. A. C., directed his executors to sell the residue of his estate as soon after his decease as they should deem judicious, and to divide resi- due of proceeds, after payment of debts, into three parts, to be held by his executors upon certain trusts. The executors sold, and held as part of proceeds certain bonds of E. N. B. secured by a mortgage of the plantation, *Dean Hall.*
Ten years afterwards a part of the money was paid by the obligor to one of the obligees, who embezzled the money so paid, and gave a receipt purporting to be signed by both the obligees, but in fact signed by one only, the signature of the other being a forgery.	*Seven* years afterwards one of the executors received payment of these bonds, and gave a receipt therefor upon the bonds.

The Lord Chancellor, Lord Hatherly, held in the case of *Charlton vs. Durham* that though the obligor intended to have the receipt of both obligees, the receipt of one was sufficient to discharge the obligors, as the obligees were executors.

This case, so similar to ours in its circumstances, fully sustains in its rulings our position and at once answers the argument of the appellee that the executors holding under a trust, were therefore technical trustees and not executors.

c. *The lapse of time from the testator's death did not affect the defendant, McBurney, with notice, as the sale was to pay debts.*

In the case of *Stronghill v. Anstey* the money had been raised on mortgage sixteen years after the death of the testator, and yet the purchaser or mortgagee was held not bound to see to the application of the money raised, the principle referrable to such a case being that the testator has shown his intention to be, to entrust the trustees with the power of receiving and applying the money.

The caution given in that case is that persons who deal with trustees *raising* money at a considerable distance of time and without apparent reason for so doing are under an obligation to inquire and see that no breach of trust is being committed.

But the case of *Charlton v. Durham* is in this respect also directly in point and decisive in our favor. In that case it was held that "debtors to the estate of a testator were not merely on account of the lapse of time to be held to have notice of the fact that all debts are paid, and that the executors have become trustees."

Lord Hatherly saying, p. 438:

"The only arguable point seems to arise upon the substitution of the Earl of Durham for his trustees. Suppose the original debtors had remained such and that these transactions had taken place with them instead of with the Earl, then there is no authority for holding that merely because the debt was not called in for some time, we are to imply that the debtors knew that the executors had ceased to be executors and had become trustees. A debtor who has been paying interest for perhaps twenty years does not therefore become cognizant of the fact of all the testator's estate having been administered and of the executors having become trustees.

"The persons with whom the executors are dealing are not bound to know the state of the testator's assets, and it may be many years before all his debts are paid and his estate wound up. There are good reasons why the receipt of one executor should suffice, as he may be called upon to pay debts, and the rule therefore prevails until you can fix the debtor with much more precise notice than we have had that the estate has been all administered.

(*d.*) *The notice necessary to charge one dealing with an executor, must be that the executor intends to commit a fraud.*

Story Eq., " § 423. The reason for this diversity of doctrine has been fully stated by sir William Grant.—" It is true, (said he,) that executors, in

equity, are mere trustees for the performance of the will. Yet in many respects and for many purposes third persons are entitled to consider them absolute owners. The mere circumstances that they are executors will not vitiate any transaction with them, for the power of disposition is generally incident, being frequently necessary. And a stranger shall not be put to examine whether in the particular instance that power has been discretely exercised, &c.

This principle is fully recognized in the courts of the State of South Carolina. *Lawrence v. Lucas*, 6 Rich. Equity, 217, and by this Court, in the case *Long et. v. O'Fallon*, 19 How., 125.

A very similar case to this has reached the Supreme Court of South Carolina and there been decided during the pendency of this suit. The case of *Mayer v. Mordecai, So. Ca. Rep., N. S.*, 1 *Rich*, 383. The facts are thus stated in the head-note:

"By deed in May, 1860, three bonds secured by mortgages of real estate were assigned to B in trust to invest the proceeds as soon as received, in such manner as the said B may think proper on consultation with the *cestui que trust*, and then permit them to receive the income. The *cestui que trust* removed shortly afterwards from South Carolina, where the trust was created, to New York, and remained there during the war with the Confederate States. In 1863 and 1864 B collected the bonds in Confederate treasury notes, then much depreciated, and invested the proceeds in bonds of the Confederate States without consultation with the *cestui qu trust*, with whom it was at the time impraticable to communicate.

"*Held* that B committed a breach of trust in receiving payment of the bonds in Confederate treasury notes and investing the proceeds in bonds of the Confederate States, and that he was to account to the *cestui que trust* for the sums received.

"Held further that the obligors in the bonds were not liable to account to the *cestuis que trust*, for that they were discharged by the payment to B.

Moses, C. J., in delivering the opinion of the court, says:

"Although the trustee is not discharged from liability to account for the three bonds, yet the mortgage as against the original debtors cannot be set up as of force. The legal title to the bonds was in him, and with the investment of the proceeds they had no concern if, according to the rule in this State a vendee is not bound to see to the application of the purchase money. (1 *Lining v. Peyton*, 2 *De S. Laurens v. Lucas*, 1 Rich: Eq.: 226.) or a mortgagee under the order of the court, that the money is appropriated to the purpose for which the mortgage was taken. (*Spencer v. Bank of State*,) Bail. Eq.: 468; much less can a debtor, who makes satisfaction to the creditor in a manner acceptable and agreed to by him in the form of actual payment be held to such requisition."

In the case of *Long v. O'Fallon* this court say:

"His (administrator's) sale of the land was a legitimate exercise of the powers of an administrator and trustee, and his vendee was not obliged to look to the application of the purchase money. (*Tyrell v. Morris. Dev. and Bat., ch. R.*, 559.) His failure to account was a *devastavit* for which he and his sureties are liable on their official bond at law: and probably if the land had been retained by him, or any person claiming as a volunteer under him, a court of equity might have permitted the heirs to accept the property instead of the debt due to the estate. But in the present instance the defendant is a purchaser in good faith and is entitled to hold the property exempt from the claims of the plaintiff. (*Rayner v. Persall*, 3 *John, ch. R.* 578.)

3. *Bill alleges assignment by her sons to complainant under their father's will shortly begore suit commenced, but it does not state any consideration, and no consideration was in fact paid.*

1. *Fonblanque, Equity*, 349.

"But regularly, equity is remedial only to those who come in upon an actual consideration: so that although a voluntary conveyance which is good in law is sufficient likewise in equity: yet a voluntary defective conveyance which cannot operate at law, is not helped here in favor of a bare volunteer where there is no consideration expressed or implied."

In the case of *Jefferys v. Jefferys, Eng. Chan.* 19; 1 *Craig and Phillips*, 141.

The Lord Chancellor, with respect to the copy, held:

"I have no doubt that the court will not execute a voluntary contract, and my impression is that the principle of the court to withhold its assistance from a volunteer applies equally, whether he seeks to have the benefit of a contract, a covenant or a settlement."

In Sewell v. *Moxly*, 42 *Eng. Chan. Rep.*, 2 *Sims*, 191, the Vice Chancellor, after stating the facts, says:

"The question is, whether the debt is due to the plaintiff, for to entitle her to sue she must be a creditor of Stallwood? She says she is a creditor by virtue of the assignment made to her by Mr. Sanders. But an assignment of a chose in action doas not convey any legal right. In the view of a court of equity it operates only as an agreement, and if it is voluntary the court will not enforce it at the suit of the assignee against the assignor. Now the assignment under which the plaintiff claims to be a creditor of Stallwood was voluntary, and consequently the plaintiff could not enforce it against Mr. Sanders, the assignor. And this being so, I cannot decide that she is not a creditor of Stallwood, or entitled to sue as such. Therefore the claim filed by her must be dismissed with costs.

The principle that equity will not be remedial or assistant to mere volunteers, is recognized by the courts of South Carolina in their earliest decisions. (*Maine* v. *Dickinson*, 2 *DeSe.*, Chan. Rep., 191, and *Jacks* v. *Turner*, 3 *DeSe.* Chan. Rep., 1; and by the courts *of* of New York in *Bunn* v. *Winthrop*, 1 *Johnson Chan.*, 336.

To sum up, then, what we have endeavored to say, the appellant thinks he has cause to complain that the clerk was allowed to accept as security for costs, a person beyond the jurisdiction of the court; and that the complainant was allowed to withdraw the bill to which he had been called upon to answer under subpoena, and to which he claims to demur and to substitute another and essentially different complaint against himself, without notice to him, or leave asked for and obtained from the court; that he was not heard upon his demurrer to the original bill, and was required to answer the substituted one under the subpoena to the first. But he still more strenuously objects to the complainant involving him in matters concerning other persons of which he knows nothing, in which he is not interested, and for which he is in nowise responsible; and he again urges upon this court, that if he is called upon to defend himself under this irregular practice, that he, at least, may be secured against further litigation by requiring the complainant to bring in all the parties who have an interest in the matter, that complete justice and equity may once for all be done; that if this cannot be, that the court will dismiss these proceedings and remit the parties to the State courts, where the complaint may be heard and all against whom she complains, or whose rights are involved in her complaint, may be required to appear, and where complete justice and equity can be done.

But that, if under the circumstance, this court holds that he should have been required to answer that he insists that he, the appellant William McBurney, (with his copartners) was a purchaser for valuable consideration; that he gave the full value of the plantation, measured by the rule established by law in his state; that he gave much more for it than it is now worth; That he had no notice of any wrong doing, nor has there any wrong been done by his executors in receiving payment of Ball, upon his bond in confederate currency; that if the executors afterwards misappropriated the proceeds of sale, and invested in confederate bonds, that is a matter to which he is no party, of which he knows nothing, and acknowledges no responsibility.

That the will directed a conversion "*out and out*,"-that is a sale of the lands, and investment as the executors should deem most judicious; that the testator gave entire control to the executors, and that if in the reinvestment of the funds recovered from Ball they abused the confidence placed in them, the complainant must look to them but not to the appellant or his late partners.

That the bond and mortgage by Ball, which he and his partners required satisfied before they would comply with their purchase were made to *executors* and *not to trustees*; that the same rules do not apply to executors as to trustees; that one executor is fully authorized to receive payment, release and satisfy; that the time that had elapsed from the testator's death did not affect the appellant with notice of breach of trust, if such breach had been committed, which it had not.

That the notice to charge one dealing with one executor must be that the executor intends to commit a fraud—that no such fraud is alleged, and none such attempted to be proved.

That the complainant, if she could succeed at all, could only do so as to her own direct interest under the will, as equity will not be enforced in favor of one under a voluntary assignment.

The appellant and his late co-partners having acted in good faith, having paid full value for the lands they purchased from one to whom they had been conveyed by those authorized to transfer it, and the mortgage thereon having been satisfied by one authorized to satisfy it, he prays that the court will dismiss the bill of one who comes not only to make her own claim but to ask the court to decree for her, as a volunteer, the claims of others.

Edward McCready Jun

Supreme Court of the United States.

ALEXANDER ROBERTSON *et al.*, Appellant,

vs.

CAROLINE CARSON, Appellee.

BRIEF OF POINTS AND AUTHORITIES SUBMITTED BY MR. LOWNDES ON BEHALF OF THE APPELLEE.

STATEMENT OF FACTS RELIED ON BY APPELLEE.

In August, 1856, W. A. Carson died in South Carolina, leaving a large amount of property, real and personal, in that State. By his will he appointed the defendants, Alexander Robertson and John F. Blacklock, executors thereof, directed them to sell, with small exceptions, all his property as soon as, and upon the terms they deemed judicious, to pay his debts out of the proceeds, to divide the balance of the proceeds into three equal parts, and to hold in trust one third part for his son, William Carson, another third part for his son, James Petigru Carson, and the remaining third part for his widow, the appellee, during her life, and after her death for his two sons.

Both executors qualified; about the beginning of 1857 had sold all the property, paid the debts, divided the proceeds into three equal parts, and became the joint holders in trust of one such part for each of the three said legatees. For William Carson they held a bond of E. N. Ball, the defendant, for $9,000, and one-third of another bond of E. N. Ball for $4,000; for J. P. Carson, a bond of E. N. Ball for $9,000, and one-third of the said bond of E. N.

Ball for $4,000; for the complainant, a bond of E. N. Ball for $9,000, and one-third of the said bond of E. N. Ball for $4,000. The said bonds, executed to the two executors, and amounting in the aggregate to $31,000, were secured by E. N. Ball's mortgage to the two executors of Dean Hall Plantation, which was the testator's property, and had been sold to E. N. Ball for $50,000. These bonds and the mortgage were given to the executors to secure the unpaid portion of the purchase money of Dean Hall. Both executors joined in the conveyance to E. N. Ball. The executors also held for each legatee a joint and several bond of E. N. Ball, and the defendant, W. J. Ball, for $11,000, each bond being executed to both executors.

Since the early part of 1861 the appellee has resided in New York, and William Carson in Europe or New York. Mr. Blacklock was in Europe during the whole period of the war. In March, 1863, the defendant, McBurney, entered into a treaty with E. N. Ball for the purchase of Dean Hall for $100,000 of Confederate treasury notes, and advanced in his own name, or for those he represented, a certain amount of those notes to E. N. Ball, to enable him to get his said bonds and mortgage satisfied by Robertson. Robertson was the only one of the trustees then in the Confederacy. The complainant and William Carson were beyond the limits of the Confederacy, and had no communication with Robertson after the outbreak of the war. William and James P. Carson were both under age. Mr. Blacklock was abroad, and could not be consulted. Mr. Robertson acceded to the proposition of E. N. Ball, and for an amount of the Confederate notes of the nominal value of the bonds and mortgage surrendered them, and entered satisfaction on the mortgage. The market value of the mortgage bonds was much greater than their nominal value in Confederate notes. These notes could not have been used at the time by either the complainant or William Carson. E. N Ball, in pursuance of his treaty, subsequently, viz: in April, 1863, conveyed Dean Hall to McBurney and one Gillespie, to the use of

the firm of Hyatt, McBurney & Co., (consisting of the said McBurney, now and then a citizen of South Carolina; of the said Gillespie, then a citizen of South Carolina, but now of New York; of Edmund Hyatt, then and now a citizen of New York; of William Hasseltine, then of South Carolina, but not now found within its limits; and of William R. McGahan, now and then a citizen of South Carolina.)

McBurney and Gillespie had notice that the title of the bonds and mortgage in question were vested in, not Robertson alone, but in Robertson and Blacklock, and they had notice that they were vested in them as trustees of the appellee and her children.

The appellee's sons assigned to her their interests under the will of W. A. Carson. The appellee, her sons, and the other trustee, Blacklock, repudiate the act of Robertson, in satisfying the bonds and mortgage. The bill alleges the insolvency of Robertson and Blacklock, and in the answers there is no denial on this point.

Points and Authorities.

On the question of parties:

I. The Federal equity courts are exceptionally liberal in dispensing with parties, the rule in regard to parties being itself subject to the discretion of the courts.

Two things have led these courts to this exceptional liberality. The first is the limitation upon their jurisdiction by the citizenship of parties; the other is the limitation upon their jurisdiction by their inability (until the late statute) of bringing in parties by publication. The narrowing effect upon their jurisdiction of these limitations has led them to enlarge the rule as to parties.

Walworth C. Hallett *v.* Hallett, 2 Paige, 17.
Mallow *v.* Hinde, 12 Wheaton, 198.
Eberly *v.* Moore, 24 How., 158.

"It would be a positive wr ng in this court to turn from its doors a suitor in another State seeking a remedy against

citizens in this State, and thus deny to her a right secured by the Constitution upon a doubtful question in reference to parties. We would follow rather the example of Judge Story, that great light of equity jurisprudence, and strain a point in favor of the constitutional right of citizens of the several States to sue the citizens of other States in the courts of the United States. It is a right too clear and too important to be lightly disregarded." (Chase, C. J., in this case.)

II. In pursuance of this liberal policy, the courts of the United States have acted upon this principle, viz, that, where a party, not before the court, is not an inhabitant of or found within the district where the suit is brought, the court will proceed without such party, unless he is an *indispensable* party, or *one whose rights are necessarily affected by the decree.*

There are three classes of parties: 1. Formal parties. 2. Necessary or convenient parties. 3. Indispensable parties. The *federal courts dispense with parties of the first two classes.*

Shields *v.* Barrow, 17 How., 139, where all the cases on this point are collected.
Canal Co. *v.* Gordon, 6 Wallace, 561.
Payne *v.* Hook, 7 Wallace, 431.
Traders' Bank *v.* Campbell, 14 Wallace, 94.

It is submitted that in Payne *v.* Hook and Traders' Bank *v.* Campbell, the parties dispensed with were directly affected in their interests by the decrees, and that they were in a stronger sense "necessary parties" than those whose absence is objected to in this case.

The sources of this rule are the act of 1839, and the 22d and 42d rules of the courts of equity. If the act of 1839 were literally construed, it would amply cover this case. But Shields *v.* Barrow has given it a construction narrower than the literal one.

To apply these principles to this case:

The assignee in bankruptcy of E. N. Ball is surely not an indispensable party. Ball passed all his interest in

Dean Hall to McBurney and Gillespie by his deed. Ball's presence, or that of his assignee in bankruptcy, would be convenient to the defendants, because they might make their claim over against him. But he is only a convenient party, and his convenience is to the defendants. A stronger case than this is that of a mortgagor making a second mortgage; but in South Carolina he need not be made a party. (Gen. Statutes, 389.) The case of Caldwell *v.* Carrington, 9 Peters, 86, was a case similar to this.

Gillespie, in his character of co-trustee with McBurney, is not an indispensable party.

1. The other trustee, McBurney, is before the court, and fully represents the trust estate. If Gillespie came in, he would have nothing to do but to sign McBurney's answer.

2. It has been decided that an absent co-trustee is not an indispensable party.

West *v.* Randall, 2 Mason, 191.

3. The appellants, in order to get possession of the appellee's property, dealt with one of her trustees. It would be hardship that they should argue for the authority of one trustee, in obtaining her property, and deny the authority of one trustee in defending it against her suit.

Hyatt, McGahan, Hasseltine, and Gillespie, in their character of copartners of Hyatt, McBurney & Co., are not indispensable parties.

1. They are *cestuis que trustent*, under the conveyance to McBurney and Gillespie, (Brief, 28, 29,) and their trustee, McBurney, who is before the court, fully represents them.

2. By the 49th rule in equity, the trustee under a devise of realty is the proper party to defend a suit affecting it. This case is an analogous one.

3. It is decided that a copartner is not an indispensable party, a partner before the court being taken to represent sufficiently the others.

Story, J., West *v.* Randall, 2 Mason, 191.

4. At law, service on one copartner is sufficient in South.

Carolina. (7 Statutes, 281.) Suits like this are within the reason of that rule.

5. The property is realty—a fact which makes the case stronger than Payne *v.* Hook, and Traders' Bank *v.* Campbell.

In the answer of McBurney (Brief, p. 29) it is alleged that the trustees, McBurney and Gillespie, exercised their power of appointment by mortgaging Dean Hall to Hyatt. Is, then, Hyatt, as mortgagee, an indispensable party?

This mortgage has not been put in evidence, and there is nothing in the brief which warrants the court to accept its evidence as a fact.

Further, this mortgage to Hyatt was simply a copartnership transaction. It amounted, in fact, to nothing more than setting aside in severalty Hyatt's share in the assets of Hyatt, McBurney & Co. The equitable lien which Hyatt had on the copartnership assets, for his share on an account with his copartners, was as sufficient a security to him as the mortgage. The mortgage was idle, for Hyatt's lien existed antecedently to it and independently of it. There was no new consideration given for the mortgage by Hyatt, and he is therefore not, by virtue of the mortgage, a purchaser for value. It would be great hardship to hold him to be an indispensable party, by reason of a supposed deed which did not materially change his rights.

III. There is another principle observed by the Federal courts of equity, viz, that where the joinder of a party will oust the court of its jurisdiction, it will go very far in dispensing with parties.

Story, J., West *v.* Randall, 2 Mason, 196.
Payne *v.* Hook, 7 Wall., 431.

It is on this principle that the chief justice rested his decree overruling the demurrer for want of parties in this case. Hyatt and Gillespie being both citizens of New York, where the appellee has her domicil, to order them to be made parties is to send the appellee out of the Fed-

eral courts. To send her out of those courts is, in consequence of the decisions of the State courts of South Carolina on this class of questions, to take away from her all redress.

IV. Since the decree was rendered in this case, an act of Congress (XVII, S. L., 198, § 13) has provided that absent defendants may be brought into the United States courts by publication. If this court holds that this act so enlarges the jurisdiction of the Federal courts as to allow the absent parties in this case to be brought in, then the rule laid down in Pugh *v.* McCormick (14 Wall., 361) will apply, viz, that this court will not send back a case when, by reason of a new statute, the decree appealed from has ceased to be error.

To sustain the decree is not to adjudicate the rights of any one in his absence. Its effect would only be to place the appellee in possession of lands as against those now actually in possession. The absent claimants are in noways concluded.

Argument on the Merits.

The appellee, as against McBurney and those in like interest, relies upon the principle of equity, that a purchaser of trust property from a trustee, with notice of the trust, is bound to the same extent as the person from whom he purchased.

Lewin, 725, and Hill, 509, citing English cases.
2 Story's Eq. Jur., 487.
Caldwell *v.* Carrington, 9 Pet., 86.
Boone *v.* Chiles, 10 Pet., 212.
Oliver *v.* Pratt, 3 How., 333.
Massey *v.* McIlvain, 2 Hill's Chan., 421.
James *v.* Breman, 2 De Sauss., 560.
Maragne *v.* Carrol, 4 De Sauss., 256.
Williams *v.* Hollingsworth, 1 Strob. E., 103.
Bush *v.* Bush, 3 Strob. E., 131.
O'Neill *v.* Cathran, 4 De Sauss., 553.
Blake *v.* Jones, Bailey, 141.

Cummings *v.* Coleman, 7 Rich. Eq., 509.
Ellis *v.* Woods, 9 Rich. Eq., 19.
Frelwell *v.* Neal, 11 Rich. Eq., 559.
Matthews *v.* Hayward, 2 S. C. N. S., 239.

"It is a clearly-established principle in equity jurisprudence, that whenever the trustee has been guilty of a breach of the trust, and has transferred the property, by sale or otherwise, to any third person, the *cestui que trust* has the full right to follow such property into the hands of such third person, unless he stands in the predicament of a *bona fide* purchaser for a valuable consideration, without notice. * * *

Oliver *v.* Pratt, 3 How., 333.

If the purchaser have notice of the trust, *his having given a consideration* will not avail him.

Sugden V. & P., vol. 3, chap. 22, sec. 2.
Lewin, *Ibid.*

"*The rule applies not only to the case of a trust property, so-called, but to purchasers with notice of any equitable incumbrance.*"

Lewin on Trusts, 725.

The purchaser with notice from a purchaser with notice is bound by the trust.

Ibid.
Caldwell *v.* Carrington, 9 Pet., 86.

A general denial of knowledge of fraud will not avail.

Wormley *v.* Wormley, 8 Wheat., 421.

In application of these principles, it is contended for the appellee that Robertson and Blacklock held the bonds and the mortgage of Dean Hall as trustees; that the act of Robertson in surrendering these bonds and the mortgage, without the concurrence of Blacklock, was insufficient in equity to pass the title in them; that if he had the power to surrender the bonds and to satisfy the mortgage, his act in doing so, in consideration of Confederate trea-

sury notes, was a breach of trust; that Mr. Burney, when he procured this surrender and satisfaction, had full notice of the trusts affecting the bonds and the mortgage, and that consequently equity will set aside the surrender and satisfaction so made by Robertson.

I. Robertson and Blacklock were in 1863 clearly trustees, and not executors, in respect of these bonds, the mortgage, and the will of W. A. Carson.

The principle is, that when a fund is given to a person upon certain trusts, and he is appointed executor, as soon he has severed the legacy from the general assets, and appropriated it to the specific purpose, he dismisses the character of executor and assumes that of trustee.

Hill on Trustees, 237, 364.
Lewin on Trusts, 247.
Taylor *v.* Deblais, 4 Mason, 131.

The same law obtains in South Carolina.
Gray *v.* Brown, 1 Richardson L., 351.
O'Neall *v.* Herbert, McMullan Eq., 495.
Schnell *v.* Schroder, Bailey's Eq., 328.

In 1863 Robertson and Blacklock had long since done all which they had to do as executors. They had paid the debts of their testator; they had divided the estate into three parts, and specifically appropriated these parts. (Answers of Blacklock and Robertson, Brief 33 and 34. Their accounts filed with the ordinary, Brief 56.) Their account shows that they had paid these parts over to themselves as trustees (Brief 56) on the 29th June, 1857. But in the absence of such conclusive evidence, the law would have presumed them to be trustees, because they had no longer any duty to perform as executors.

II. Robertson could not in equity, without Blacklock, pass the title in the bonds and the mortgage.

It is, to say the least, doubtful whether *at law* he could do so; but it is unnecessary to argue that question.

"Where the administration of the trust is vested in co-trustees, they all form, as it were, one collective trustee, and therefore must execute the duties of the office in their joint capacity." "If a trustee refuses to join, it is not competent for the others to proceed without him, but the administration of the trust devolves upon the court."

Lewin on Trusts, 297, 299, 298, 448.
Hill on Trustees, 307, 308.
Sugden on Vendors and Purchasers, 50.
Mayrant *v.* Guignard, 3 Strob. Eq., 128, S. C.

Equity will enforce a mortgage against the purchaser from one of two trustees, either at the suit of the other trustee, or of the *cestui que trust.*

Lewin on Trusts, 317.

The other trustee, Blacklock, repudiates Robertson's act. (Brief, p. 33.)

This was not the case of one trustee accepting payment of a security, for the Confederate treasury notes were in no sense money.

III. But if Robertson alone could have passed the title in the bonds and the mortgage, it was a breach of his trust to do so for Confederate treasury notes.

It has become unnecessary to argue this point on principle, because the courts of South Carolina have repeatedly decided it.

Mayer *v.* Mordecai, 1 S. C. Rep., N. S., 383.
Fitzsimons *v.* Fitzsimons, *Ibid*, 400.
Sanders *v.* Rogers, *Ibid*, 452.
Dunn *v.* Dunn, *Ibid*, 350.
Creighton *v.* Pringle, 3 *Ibid*, 78.
Curetor *v.* Watson, *Ibid*, 451.

At the time of the transaction, the value of Confederate treasury notes was, in open market, as compared with that of the United States treasury notes, as 1 to 3.

Mayer *v.* Mordecai, *supra.*
S. L. of S. C., XIV, p.

McBurney paid Ball $100,000 in Confederate treasury notes for Dean Hall, for which the latter paid, or agreed to pay, in gold, $50,000. (Brief, pp. 35, 57.) This fact alone shows the depreciation of those notes.

Thorington *v.* Smith does not apply to this case, as in that the question was not as to the duty of a trustee.

The act of Robertson was none the less a breach of trust, because, under the will of W. A. Carson, his trustees had the power to invest and reinvest. An express power in a trustee to invest and reinvest must be exercised as such an implied power should be; and Mayer *v.* Mordecai, and the other cases just cited, show that the latter power cannot be used to invest trust funds in Confederate treasury notes. Such an exercise of an express power is clearly bad on general equitable principles.

Hill on Trustees, 495.
Spear *v.* Spear, 9 Rich. Eq., 184.
Nanee *v.* Nanee 1 S. C., N. S., 209.

IV. McBurney and those claiming under him had full notice of the trust attaching to the appellee's bonds and mortgage; and McBurney, for himself and for them, aided and procured the breaches of trusts to be done. Equity will not allow him to derive benefit from these breaches of trust.

As to McBurney's part in the negotiation, see his answer, (Brief, 28.)

"The purchaser is supposed to have knowledge of the instrument under which the party with whom he contracts as executor, trustee, or appointee, derives his powers." "Registration of a conveyance, required by law to be registered, is notice to all the world."

Story's Eq. Juris., §§ 400, 403.

Wills and executors' accounts are required to be recorded.

General Statutes S. C., 176.

McBurney and those he represented had, in law, notice of W. A. Carson's will and of the executor's accounts, in

which were exhibited the trusts attached to the bonds and mortgage held by Robertson.

The conclusion is, that the circuit court was right in giving the appellee the relief which it did.

But notwithstanding the plain equities of the appellee, she will be without redress if she cannot obtain it from the Federal courts, whose protection she, as a citizen of New York, is entitled to claim; for the appeal court of South Carolina has held, in the late case of Meyer *v.* Mordecai, that although it is a breach of trust in a trustee to satisfy a bond and mortgage in consideration of Confederate treasury notes, the purchaser from the trustee, with notice of such a breach of trust, may take the property discharged of the trust.

This case is distinguishable from Mayer *v.* Mordecai in two particulars: 1. In the latter case the trustee demanded payment of the bond and mortgage. It would be hard to render liable one who, merely to save his property, complied with the demand of the trustee. In this case there was no such demand. 2. In this case McBurney (to use the language of the court in Mayer *v.* Mordecai) "wrongfully facilitated the accomplishment of" the breach of trust.

But it is submitted that the court, in refusing to give relief in Mayer *v.* Mordecai to a purchaser for Confederate money from a trustee, declined to enforce a principle of law repeatedly affirmed by the courts of England, by the Federal courts, and by the courts of South Carolina. In reference to the opinion of the court in that case, it is to be observed:

1. That *knowledge of the trust*, and not fraud or combination, is the ground of the relief granted by courts of equity against purchasers from a trustee.

2. That the delivery of Confederate treasury notes to a trustee is notpayment of a bond. The court held the two propositions destructive of each other, that this act was as regards the trustees no payment, and that as regards the purchaser it was payment.

3. That the doctrine that a purchaser is not bound to see to the application of purchase money had no application in Mayer *v.* Mordecai. If the purchaser had paid money to the trustee, he clearly would not have been liable. There had been no misapplication by the trustees. But the purchaser had delivered Confederate treasury notes instead of paying money, in accordance with his contract.

That the courts of South Carolina refuse to administer the principle of equity in relation to purchasers from a trustee, only in cases arising out of transactions in Confederate money, appears from the fact that shortly after the decision in Mayer *v.* Mordecai it gave, in Matthews *v.* Heywood, (2 S. C., N. S., 239,) full effect to the principle contended for.

Are, then, the Federal courts bound to accept this arbitrary exception made by the courts of South Carolina? They clearly are not.

The 34th section of the act of 1789 provides that "the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at *common law*, in courts of the United States, where they apply."

The act of May, 1792, (1 Stats. at Large, 92,) provides that the proceedings in suits at equity shall be "according to the principles, rules, and usages which belong to courts of equity, as contradistinguished from courts of common law."

Under these statutes it has been uniformly held, since the establishment of the Government, that the courts of the United States administer equity on the general principles of English equity jurisprudence.

"The settled doctrine of this court is, that the remedies in equity are to be administered, not according to the State practice, but according to the practice of courts of equity in the parent country, as contradistinguished from courts of law."

Story, J., Boyle *v.* Zacharia, 6 Pet., 658.

The same rule is declared in numerous cases.

United States *v.* Howland, 4 Wheat., 116.
Robinson *v.* Campbell, 3 Wheat., 222.
Livingston *v.* Story, 9 Pet., 632.
United States *v.* Reid, 12 How., 363.
Dodge *v.* Woolsey, 18 How., 347.
Barber *v.* Barber, 21 How., 592.
Payne *v.* Hook, 7 Wall., 425.

In a very recent case the same doctrine is held.

Olcott *v.* Supervisors, 16 Wall., 678.

That no consideration appears in the assignments made to her by her sons is no concern of the appellants. Equity will not enforce a voluntary assignment against the *assignor*. But there is no such law as that contended for by McBurney. To assign such interests as these is a matter of common right.

The matters of practice, in respect of which error is assigned, were within the discretion of the circuit judge. He committed no error; but if he did, the appellants suffered no detriment. The late act of Congress heals any defects of practice occurring in the course of a suit.

Supreme Court of the United States.

ALEXANDER ROBERTSON, JOHN FREER BLACKLOCK, WILLIAM McBURNEY, and WILLIAM J. BALL, Appellants,

vs.

CAROLINE CARSON, Appellee.

No. 209.

BRIEF OF APPELLEE.

The principal question in the case is as to the bonds of Elias N. Ball, the principal of which amount to $31,000, secured by mortgage on the "Dean Hall" plantation.

The will of the deceased husband of Caroline Carson directed his estate to be sold, and after payment of his debts it was to be divided into three equal parts, and to be held by his executors or his qualified executor in trust, to pay the interest of one third to his widow, the appellee, and the interest of each remaining third to each of his two sons, each son, on arriving at lawful age, to receive his one third. The two sons, after arriving at lawful age, assigned their interests in the estate to their mother, the appellee. The appellee is therefore entitled to the entire estate left after the payment of debts. It is admitted by the executors, defendants, that the debts were all paid by the sale of the estate in the beginning of 1857, leaving a large surplus in the hands of the executors, subject to the trusts of the will in favor of the widow and two sons, of over $64,500.

A portion of the property of the estate of the testator, Carson, was a rice plantation known as "Dean Hall," of over two thousand acres, situated on Cooper river, in proximity to the city of Charleston. This valuable plantation was sold by the executors in 1857, to Elias N. Ball, for

$50,000. He paid $15,000 of the purchase money in cash, and for the balance he gave bonds, secured by a mortgage of the plantation. These bonds, amounting to $35,000, secured by the mortgage of the "Dean Hall" estate, which in January, 1857, had been sold for $50,000, were held by the executors in trust for the *cestui que trusts*, the widow and two sons of the testator.

The provisions of the will, to which it is deemed proper to call attention, are as follows:

"From the proceeds of sale, I order and direct my debts to be paid, and then the residue of the purchase money to be divided into three equal parts, and *held* by my executors, or my qualified executor, *in trust* for the following purposes." (Transcript, sec. 19, pp. 7, 8.)

"I authorize and empower my executors, or qualified executor, to invest and reinvest the purchase money of my estate, so as aforesaid to be held in trust by them, in such public or private securities or stocks as they may deem best."

The testator appointed the defendants, Alexander Robertson and John F. Blacklock, his executors, both of whom qualified, but only one of them, Robertson, made the change of securities complained of; the other, Blacklock, being absent in Europe, had nothing to do with this change of securities. (Transcript, sec. 83, pp. 33, 34.)

1. It is of consequence to ascertain, inasmuch as the defendants, Blacklock and Robertson, were appointed both executors and trustees, in which character Robertson was acting when he made the change of investment complained of.

It is clear he was acting as trustee. The probate of a will by persons appointed executors and trustees is an acceptance of the trust.

Mucklow *v.* Fuller, Jac., 198.
Booth *v.* Booth, 1 Beav., 125.

To ascertain when the character of executor ceases and that of trustee begins is difficult sometimes to determine, and every case must depend on its own circumstances.

Byrchell *v.* Bradford, 6 Mad., 235.

The following case throws light upon the subject: A testator gave £400 to Burcoll, whom he also appointed executor in trust, to invest and to pay the dividends to a person for life, and after this life-interest to pay over the principal as directed in the will. The executor paid all the testator's debts, *and set apart* the sum of £400 to answer the legacy in trust. The question arose afterwards, on plea of the statute of limitations being set up, whether the possession of Bureoll was as executor or trustee. Cottenham, Lord Chancellor, said: "The fund ceased to bear the character of a legacy as soon as it assumed the character of a trust fund. Suppose the fund had been given to anybody else (than the executor) as a trustee, and not to the executor, it would then be clearly the case of a breach of trust. *What we would have done by paying it to a trustee, he has done by severing it from the testator's property, and appropriating it to the particular purpose pointed out by the will.* It is impossible to consider that the executor, so acting, is acting as an executor; he has all this while been acting as trustee."

Phillipps *v.* Munnings, 2 M. & Cr. 309, 315.

The facts in this case are fully as strong as in the case last cited.

It appears from the answer of Robertson that all the debts were paid, and "sixty-four thousand five hundred dollars divided into three parts and *held by said executors* for the several and respective legatees according to the provisions of said will." Transcript, sec. 88, p. 35.

We submit, then, that when Robertson made the change of investment complained of, he and his co-executor were impressed with the character of trustees.

This view is strengthened by the principle that when real estate is given to persons in trust by a will, and the same persons are also appointed executors, they will take the land as devisees from the first, although the trust is to sell, and will have nothing to do with the real estate as executors.

Denne *v.* East, 11 East, 288.

See also Taylor *v.* Benham, 5 How., 233.

Trustees cannot ordinarily act separately, but must join in any sale or other disposition of the trust property.

Crewe *v.* Dicken, 4 Ves., 97.
Fellows *v.* Mitchell, 1 P. Williams, p. 83.
Wilbur *v.* Almy, 12 How., 180.

In this respect trustees differ from executors, any one of whom may dispose of the assets by his individual act.

2 Williams on Exrs., 620.

It follows, then, that the action of Robertson, in changing the investment by bond and mortgage on the "Dean Hall" estate, and entering satisfaction on such mortgage, was null and void, as being done without the concurrence of his co-trustee, Blacklock.

It was entirely proper, then, for the court below to set up the said bond and mortgage, and vacate the satisfaction entered by Robertson.

2. If, however, it should be considered that Robertson had authority, acting alone, to dispose of the bonds which were secured by mortgage on the "Dean Hall" estate for Confederate money, and convert the same into Confederate bonds, then we submit that his action in the premises was such a gross dereliction of his duty as trustee that the whole proceeding was of no effect, and the property in question still remains subject to the payment of the said bonds, and bound by the lien of the said mortgage.

The bonds in question were secured by a mortgage on a rice plantation, which had been sold in 1857 for $50,000, of which $15,000 had been paid. The bonds were therefore as safe an investment as could have possibly existed in the State of South Carolina. It would not be going too far to say this was the safest possible investment under the circumstances, and at the place. This safe investment Robertson voluntarily changed, first for Confederate notes, which notes he invested in Confederate bonds, which, of all investments possible, was the most insecure.

Such conduct on the part of Robertson was such a gross

violation of his trust; and the purchaser of Dean Hall, McBurney, participating in the transaction—indeed appearing to have originated it—the rights of the *cestui que trusts* cannot be affected by it.

As to what is a breach of trust by trustee, see—

Taylor *v.* Benham, 5 How., 233.
Gibbes *v.* Guignard, 1 So. Ca., (New Series, Richardson,) 372.
Willis on Trusts, 124, 148.
Hill on Trustees, 181.
Lewen on Trusts, 315.
Mayer *v.* Mordecai, 1 So. Ca. R., (New Series, Richardson,) 398.

That purchaser with notice of the trust colluding with the trustee, the estate remains affected with the trust in his hands.

Hill on Trustees, 164, 506, 507.

Purchaser, though at full value, if he take with notice of the trust, bound to the same extent as person of whom he purchased.

Lewen on Trusts, 609, and numerous cases cited in note at same page.
1 Story's Eq., § 395.
Murray *v.* Ballou, 1 John. C. R., 566.
Lewen on Trusts, 502.

If there be collusion, or the purchaser have notice that the sale is unnecessary, or out of the line of the trust, the purchaser is liable.

Potter *v.* Gardner, 12 Wheat., 498.

See generally—

Mechanics' Bank *v.* Seaton, 1 Peters, 299.
Oliver *v.* Piatt, 3 How., 333.

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As to Practice and Pleading.

Reply to Brief of Appellant.

1. As to the amended bill of December 14, 1866.

Amendment should be by a separate bill, and not by ~~entering the~~ interlining the original bill.

Pierce *v.* West's Ex'r, 3 Wash. C. C. R., 354.

"The plaintiff shall be at liberty, as a matter of course, and without payment of costs, to amend his bill, in any matters whatsoever, before any copy has been taken out of the clerk's office." He may also amend in a material point, as of course, after copy of bill taken, on paying to defendant the costs occasioned thereby. (Rule 28, Rules of Practice in Equity in the United States Courts.)

All applications in clerk's office for amendments to bills, which do not require the order of the court or judge, shall be deemed applications grantable of course. (Rule 5, *ib.*)

Except where personal or other notice is specially required, entry in the order-book in the clerk's office shall be deemed sufficient notice.

After answer, plea, or demurrer, before replication, the plaintiff may, upon motion *without notice*, by order of the judge, amend his bill. (Rule 29.)

From consideration of the above rules, it is submitted the plaintiff had a right to amend, by the amended bill of December 14, 1866, "without an order of court granted after notice," as the appellant insists was necessary.

The amended bill of December 14, 1866, is to be considered as allowed by order of the clerk.

Further, the order of the court of May 18, 1868, (Transcript, sec. 100, p. 40,) that the said amended bill stand as the bill in the cause, is conclusive as to the regularity of said amended bill.

The grant or refusal of an amendment is not generally assignable for error.

Spencer *v.* Lapsley, 20 Howard, 264.

2. That the demurrer to the original bill should have been heard.

The amended bill was filed December 14, 1866. (Transcript, sec. 62, p. 25.)

Demurrer of McBurney and others was filed March 4, 1867. (Transcript, sec. 64, p. 26.)

The demurrer is a general demurrer, and is entitled "demurrer to the bill of complaint of Caroline Carson." (Transcript, sec. 64, p. 26.)

The demurrer is to be taken as applicable to the amended bill, for that was the bill of complaint when the demurrer was filed.

The demurrer in question appears to have been overruled after argument by the court, the Chief Justice presiding, June 5, 1869. (Transcript, sec. 105, p. 42.)

3. That defendant should not have been required to answer to the amended bill under *subpœna* issued upon the original bill.

It is sufficient, in reply to this objection, to say that an amended bill is but a continuance of the original, and both reckoned but as one.

1 Harrison's Chancery Practice, p. 92.

Not necessary, on amendment of bill, to serve new *subpœnas* on original defendants.

1 Harrison's Chancery Practice, p. 95.

4. As to the objection of multifariousness.

No general rule can be laid down as to what constitutes multifariousness; each case must be examined in reference to the leading principles, not to subject one party to a litigation between others in which he has no interest, and not to allow unnecessary multiplicity of suits.

Gaines *v.* Chew, 2 How., 619.

Oliver *v.* Piatt, 3 How., 333.

Plaintiff's case, shortly stated, is, that her trustee, Robertson, in collusion with certain parties, in breach of his

trust, wasted her trust securities. Robertson, and such of the parties so in collusion with him, who are within the jurisdiction of this court, are made parties defendants. It is submitted this is not a case of multifariousness, because—

(*a*) No defendant is subject to a litigation in which he has no interest.

(*b*) To hold this case multifarious would be to require an unnecessary multiplicity of suits against defendants, who all claim non-liability to plaintiff, on the common ground that Robertson did not commit a breach of trust.

5. That the bill was defective for want of parties.

Upon this point it is deemed sufficient to refer to the opinion of Chief Justice Chase, on circuit, in the case reported as Carson *v.* Robertson, 2 Am. L. T. Rep., p. 116.

6. The district judge had no authority to order an addition to the transcript.

This was merely an insertion in the record of an exhibit referred to in the answer of Robertson, and which, by inadvertence, had been left out of the record by the clerk.

The affidavits of Henry E. Young (Transcript, sec. 132, p. 53) and James Lowndes (sec. 133, p. 54) show the propriety of this addition to the transcript.

6. That the district judge erred in allowing the clerk to accept, as security for costs, the obligation of a person beyond the jurisdiction of the court.

This, being a matter of discretion, is not the subject of appeal.

Cheang-kee *v.* The United States, 3 Wall., 320.

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